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No. A-1

Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on Government Agencies

Ontario Human Rights Commission



Second Session, 34th Parliament

Wednesday 1 November 1989

Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers





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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday 1 November 1989

The committee met in camera at 0930 in room 228.

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ONTARIO HUMAN RIGHTS COMMISSION (continued)

The Chair: I call the standing committee on government agencies to order. We are continuing our deliberations with regard to the Ontario Human Rights Commission. This morning we have with us the chief commissioner, Catherine Frazee. Welcome to the committee.

I want to say to you this morning that since our conversation on Thursday, I did not realize and I did not have a chance to talk to you with regard to how the committee was proceeding. I realized on Monday that there were about four more people who wanted to appear. I brought it up to the committee this morning when we were in camera and we thought it would be only fair to have you today and if you wanted to come back later, if there were any comments made that you wanted to comment on, you would be quite welcome to reappear. So we will proceed this morning and I presume you probably have a statement.

Miss Frazee: I have a few remarks I would like to make, if I may. Thank you very much for your consideration of my earlier request. I will certainly be here next Wednesday to hear the presentations that are made and perhaps we can judge accordingly after that event.

I would like to thank this committee on behalf of the commission, first and foremost for the opportunity for me to address this committee this morning, more important even, I think, for the opportunity to discuss with you a number of issues which are indeed critical to our success and future direction at the commission and, I think, most important, for the opportunity to hear the very thoughtful and concerned presentations of the many speakers who have preceded me in this position before this committee.

I want to thank you also, before I begin, for what I sense and understand to be your commitment, as a committee and as individuals, and for your support of a human rights commission in Ontario which is perceived with integrity and which is managed as an organization of best practice.

I do not have a written brief to distribute to you today other than the report of 3 October which was sent to this committee and also the annual report of the commission and, I believe, the Robertson report on systemic discrimination, which were made available earlier to committee members.

Following this morning's discussion, it may be appropriate for me to put forward a more detailed written submission outlining some of the issues and concerns that form the subject of our discussion this morning, but for the present I will simply apologize for the absence of a handout.

By way of opening remarks, I would like to set out a few fundamental values which I think form the context for the work which I and the commission and the staff of the commission hope to undertake in the months and years ahead.

In preparing my opening remarks for today, I certainly received a great deal of input and advice from my fellow commissioners and from my colleagues at the commission. In true anarchistic fashion, late last night I disregarded all of this advice and drafted, in a form with which I am comfortable, the essential substance which we all agree was important and which I bring to this committee this morning.

As I say, what I would like to do first of all is to articulate a number of fundamental values for our commission. These are, in my opinion, the four most important values and I would like to discuss very briefly the application of each in practical terms. The four values which I have chosen are effectiveness, progressiveness, credibility and accessibility.

Starting with effectiveness, I believe that the greatest single measure of our effectiveness as an agency will be and is our ability to address the issue of an enormous case load. Case load management is the main operational challenge facing and in fact endemic to every human rights commission in Canada and to all of those of which I am aware in the United States.

An active case load in Ontario of over 1,600, or over 2,300 if we include all of those which are pending closure or completion administratively, an active case load of that size distributed among our current complement of approximately 50 officers and an average age for closure of cases of 10 months and an average for cases still active

within the commission of 18 months, these statistics are entirely unacceptable to our commission. They are alarming and, as I say, unacceptable.

An effective response to this chronic problem requires, I am sure this committee appreciates, a very comprehensive blend of initiatives. Most important among these, the funding allocation for 1989-90 which we have received has enabled us to undertake hiring and administrative measures essentially to discharge our responsibility to enforce the Human Rights Code.

With that funding allocation, as you have read in the 3 October summary report, we have initiated an extensive process of case management review, an individual reporting through the executive director and the steering committee looking at all of the issues which we anticipate and perceive to be related to the backlog, and those issues are procedural, operational, jurisdictional, technological, etc.

We have, in addition, established a number of new positions for regional case co-ordinators, of whom we are currently hiring seven. These co-ordinators will bring a disciplined and consistent focus to the monitoring of cases, to the monitoring of standards and to the effecting of a faster flow through the system.

In addition, as you know, we are currently recruiting for 14 human rights officer positions in the field to better equalize and reduce the case load of each individual officer. We are expanding and upgrading the intake role of the commission. We are doing that in a manner which recognizes a very special skill set which has, I think, often been underestimated and which is required within the intake function. The intake officer—that is the name that traditionally has been used—will become a human rights assistant, and with that change of name and title comes a recognition that the intake function includes counselling, referral, facilitation, conciliation and expertise in the Human Rights Code and its jurisdiction.

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In support of this investment and development in human resources, we are also nearing completion of a comprehensive procedural manual. This will be a training and a reference document which, I believe, rather effectively strikes a delicate and a necessary balance between two, often conflicting, interests: on the one hand making our processes efficient and expediting the flow of cases and on the other hand ensuring fairness and equity in handling and resolution of very complex disputes.

In addition, we are piloting partial implementation right now of an information technology plan. This plan embraces short- and long-term measures for electronic communication and for automated case monitoring. We are very optimistic that that access to case monitoring electronically will enable us to identify patterns and bottlenecks within the case management system.

Finally, and the list is not exhaustive, but in areas that I wish to highlight this morning, we are certainly very active in the area, and have been recently, of articulating policy guidelines which will assist in explaining the application and interpretation of the Human Rights Code. These guidelines, such as our recently released guidelines on accommodation for persons with disabilities, our guideline on height and weight requirements, our guideline on racial slurs and harassment, enable two things. They enable a consistent approach among our staff and a consistent understanding of how the code is interpreted and they also enable the cultivation of opportunities for voluntary compliance among potential respondents: employers, service providers and persons who are providing housing who wish to be responsible and in fact to comply with the code according to a precise understanding of what it requires.

Those are the key elements that I perceive as part of our strategy to be an effective agency.

The second value which I wish to articulate is that of being a progressive agency. It is a matter of considerable pride to our commission and it is, I believe, a credit to the courage and the vision of those who have built, supported and constructively challenged the commission that we in Ontario are pre-eminent in our field and proactive in our approach.

This committee has heard and read in detail about new frontiers of a systemic approach to human rights enforcement. The Ontario Human Rights Commission intends to be at the leading edge of this particular development. We are, I think, uniquely positioned to meet this challenge, and in large measure that is owing to a particular provision under the code which enables the commission to initiate its own complaints, in addition to responding and receiving complaints filed by individuals. This is a tremendously important capacity to us and one which, quite frankly, has been somewhat underutilized in the past. It has been underutilized, understandably, because with the tremendous volume of cases already coming in, there is not a

strong element of motivation to initiate additional cases and complaints.

Frankly, we see our opportunities in this particular realm of systemic work as opportunities for real empowerment of the commission. When we initiate our own complaints, essentially we are masters in our own house. We, the commission, determine our priorities. We choose to target and investigate practices which appear to operate to an unfair, unwarranted and significant disadvantage of a group of persons protected under the Human Rights Code.

We will develop precedent-setting cases and model comprehensive settlements as a part of our systemic activity. We will and we are developing strategies which integrate and deploy commission resources in policy research and development, communications, publicity and educational outreach, expertise in litigation and the prospective of trends and patterns in our experience with individual complaints and intake. We will develop these strategies and deploy these resources to guide and support our systemic initiatives.

Our emphasis for the systemic unit, in its first year of full operation, will be upon quality and not quantity. The work of a systemic investigation team is extremely labour-intensive and it requires a very sophisticated and specialized skills set. The jurisprudence in this area is also still developing, and for these reasons, our objective in the near term will be to put our best effort forward and, through community consultations which are now under way, to choose and identify a small number of high-impact issues and to pursue leading-edge remedies with respect to those issues. We hope in that way to begin the process of dismantling significant barriers to equity in employment, service delivery and housing. That, I think, is perhaps the most important example I can give you of our commitment to being a progressive agency.

The third value which I would like to discuss or raise with you this morning is credibility. Surely the most significant factor contributing to the credibility of our organization is and will continue to be the extent to which we practise what we preach. In this regard, I am referring first and foremost to employment equity. I hasten to add that our commitment to employment equity goes far beyond the dimensions of the quest for credibility.

A diverse and representative workforce is essential to the human rights commission if we are to function as champions for human rights in this province. Our agency, by the very nature of

its mandate, must have depth of understanding, breadth of perspectives, range of experience and manifest sensibility, and those components can only come from a truly diverse workforce. I and the commission together believe in mandatory employment equity as a strategy for achieving that diversity.

To this end, as I believe you know, we have formally articulated an employment equity policy which is a set of operating principles. These principles will define our strategy for attracting qualified target group members at all types and levels of jobs in the commission. Building from the foundation of this policy, we are currently advertising for an employment equity co-ordinator who will ensure the dedicated focus to our efforts which will be essential to our success.

We have conducted training workshops for all decision-makers in the recruitment process and involved in staff development decisions, and these workshops have addressed both fundamental principles and some of the tough questions that every organization is struggling with in the context of employment equity.

We are systematically tackling barriers which we admit, acknowledge and regret are inherent to our organization, barriers such as architectural barriers of inaccessible office facilities, barriers such as credential barriers, arbitrary credentials attached to job descriptions which may not have direct relevance or be bona fide in the context of a particular job. We are looking carefully at our selection criteria, at our advertising methods, at our selection panels, at our interview formats, at our performance appraisal system and at the many intangibles of our working climate, all in the context of being a responsible and progressive employment equity employer.

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Finally, and most important, we are analysing our workforce profile data and, in relation to external labour force availability data, we will be determining numerical goals and timetables. These will take the form of an employment equity program to which we intend to be fully accountable.

The fourth of the important values that I have chosen to focus on today is accessibility. Our mandate at the human rights commission, trimmed down to its most basic element and expressed in the language of the preamble to the Human Rights Code, is to defend, enforce and further a principle which is "public policy in Ontario to recognize the dignity and worth of

every person and to provide for equal rights and opportunities without discrimination."

To "recognize the dignity and worth of every person"—as simple and as straightforward as that may appear, the practical realization of dignity and equality for all persons in the context of a legislated and, therefore, legally constructed standard often, in fact too often, necessitates a complex and frankly intimidating process of case preparation, investigation and analysis. It often culminates in decisions which are founded upon subtle interpretations and esoteric arguments. That is the reality.

An earlier presentation before this committee expressed the alarming observation that the human was missing from human rights. Our task at the commission is not only to restore it but to nurture it and to affirm it as the very heart of our mission. Our vision is to be a listening and responsive presence as we dedicate resources and attention to the development of expertise and professional competence among our agency staff and among commissioners. We pledge to do so in full cognizance of the perspective that the commission is a means and not an end in and of itself.

We are a means to the end of social justice and equality. As such, our role, perhaps our primary role, is to facilitate access to us for those who need us. Our role is to emphasize outreach, to minimize and perhaps radically even humanize bureaucracy, to state in plain language and through accessible media and to actively champion causes for the powerless and the inarticulate.

Those are essentially the principles which I know are certainly in the front of my mind and in the front of the mind collectively of the commission. I appreciate the opportunity for having started out with the articulation of those principles, but I think now really is the time for a dialogue and an exchange perhaps of views between us. As soon as I can get a glass of water, I will be happy to participate.

Mr Philip: I would like to have a brief dialogue with you now and then I have a group that has to meet with me and I hope I will be put back on the list.

In the first place, I want to say that I personally appreciate the fact that you have been physically present to meet with and to listen to every group that has made a presentation so far. Judging from your comments, you have actually heard what they have been saying, and I think that is a positive step.

If I could summarize the presentations so far, I guess there are two main themes which run through them. I would like to deal with both of them since you have hit on both of them in your initial statement.

One is what you call effectiveness, or what other people may call backlog and the problems of backlog and the time case, and the other is the problem of systemic discrimination in our society. First of all, I think you have admitted, and it is not your fault because obviously you are new in the position, that the human rights commission, for whatever reason, has not been very active in dealing with systemic discrimination. You have talked also about how you do have powers and I assume that you are speaking about clauses 28(e), (f) and (g) under the act, which allow the human rights commission the power to examine what would be systemic discrimination.

Clause (e) says "to examine and review any statute or regulation, and any program or policy made by or under statute and make recommendations on any provision, program or policy, that in its opinion is inconsistent with the intent of this act."

Clause (f) says "to inquire into incidents of and conditions leading or tending to lead to tension or conflict based upon identification by a prohibited ground of discrimination and take appropriate action to eliminate the source of the tension or conflict."

Clause (g) is "to initiate investigations into problems based upon identification by a prohibited ground of discrimination that may arise in a community, and encourage and co-ordinate plans, programs and activities to reduce or prevent such problems."

Do I take it that those are the relevant sections of your act that allow you to deal with systemic discrimination?

Miss Frazee: Also section 10 of the act.

Mr Philip: Okay, section 10. I will take a look at that in a minute, but before I do, I would like to ask you, do you not also agree that section 28 has to be taken in context with section 27? I think that this is a key point because I think that while you may have good intentions, the government is in violation of its own act under section 27. If you look at section 27, under that section, "The Lieutenant Governor in Council shall designate at least three members of the commission to constitute a race relations division of the commission and shall designate one member of a race relations division as commissioner for race relations."

I ask you: Is it not a fact that the government has not enacted its obligations under section 27?

Miss Frazee: The answer to your question is that you are correct to some extent. We do not have a designated member of the commission who is the commissioner for race relations. We have not had one since 1987 when the race relations directorate was formed, and at that time our commissioner for race relations was Dan McIntyre, who now is the director of the directorate.

Mr Philip: Okay. So the position then of commissioner for race relations was, without any kind of legislative authority, transferred from being independent under the human rights commission to what amounts to a civil service post. Is that not correct?

Miss Frazee: I know enough about the law to know that I am not qualified to answer questions which are, strictly speaking, questions of statutory interpretation. I think that the actual fact of a violation of the code I would have to defer to a legal opinion.

Mr Philip: Okay. So far in your new post you have not had or thought of having an opinion as to whether or not there is a violation of your code by the minister in actually not following what amounts to a requirement under section 27 of the act to either appoint a commissioner for race relations or appoint three members of the commission to constitute what amounts to a race relations committee of the human rights commission?

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Miss Frazee: We certainly have turned our minds to the question. You are correct in that we have not retained counsel specifically to advise on whether or not we are in breach of the code in a significant way. Instead, the activity that we have been engaged in with the ministry is the negotiation of a memorandum of understanding which certainly takes into account the overlapping roles of the directorate and the commission and in fact, in its current draft form, addresses, I think, some of the issues which are underlying your concerns, if I interpret that correctly.

Mr Philip: I do not question your sincerity in dealing with systemic discrimination, but one has to question, I guess, what the motivation is of the ministry or how serious it is about the systemic discrimination when it, without any kind of legislative authority, does not follow an important section of its own act by appointing a commissioner of race relations and the three commissioners and, again without the permis-

sion of Parliament, makes the commissioner of race relations a public servant answerable to the minister and therefore open to political manipulation rather than the independence of the human rights commission. One has to, I guess, question the sincerity or the motivation or indeed the intent of a government that would do that. I do not ask you to answer that question; it is a statement and I would not put you in then awkward situation of asking you do that at this point in time. What I would ask you to do, though—

Mr J. B. Nixon: Why do you not just sell her a membership in the New Democratic Party?

Mr Philip: I beg your pardon.

Mr J. B. Nixon: Why do you not just try to sell her a membership?

Mr Philip: I do not think that is a requirement. However, Mr Nixon, notwithstanding your sarcastic and irrelevant remark, there has a violation of the act.

Mr J. B. Nixon: How about your pompous presentation, which has been overbearing in the greatest degree?

Mr Philip: There has been a violation of the act. You may not be concerned about violations of the Human Rights Code, you may not be concerned about political manipulation of this, but the public is.

Mr J. B. Nixon: You are presently manipulating this committee. There is no evidence to make the statement that you are making.

The Chair: Order. Direct your comments to the witness we have before us, please. Interjections are out of order.

Miss Frazee: If I could interject just one point of clarification, because some of your comments seemed to be addressed to the authority to address systemic discrimination and in fact initiate complaints—I understand that was the original context for your statement—the authority to initiate complaints is contained within subsection 31(2) of the commission. Sorry. For those who do not have a code, it says, "The commission may initiate a complaint by itself or at the request of any person."

Mr Philip: Subsection 31(2) is similar to what is contained in the Ombudsman Act and is complementary to clauses 28(e), (f) and (g). The point that I am making is that is also complementary, though, to section 27. Section 27 is the section that has been violated by this government, by not being enacted.

I would like to ask you a question concerning the backlog. Have you at any time or are you at the present time contemplating a request for any kind of changes whereby you would put a time limit on the amount of time that a respondent has in responding to a complaint launched by the human rights commission? Because one of the major complaints that I have from constituents is that they go to the human rights commission, they launch a complaint and the employer knows that the longer he waits in responding, the longer he can delay, then chances are the person will get discouraged and withdraw the complaint or move or say that he is not going to proceed. I am wondering what your feeling is on that.

Miss Frazee: Sure. First of all, a decision or a position would have to be taken by the full commission, but I can certainly give you my opinion. I am quite sympathetic actually to an approach which would tighten up the time frames for various stages of the process, provided that tightening up is reasonable and is evenly applied to all parties in the complaint at all appropriate stages of the processing of the complaint. The short answer is that I am certainly sympathetic to the idea.

If I can just add one of the points which I did not make in my original presentation, we have struck within the commission an ad hoc subcommittee looking in detail at the recommendations of all of the deputations that were made before this committee. The assignment for our ad hoc committee will be to consider our recommendations and concepts, ideas which warrant further investigation and further consideration. I think I can predict that will certainly be among those issues.

Mr Philip: I guess the reason why I asked that is that when we had the major problem of bottlenecks in the Office of the Ombudsman, there were two factors. One was the need for an adequate computer system that would spit up, if you want, the case on a regular basis to make sure that some action was taken and that it did not just get lost if a particular ministry in the case which would be the respondent did not respond.

That may well be fine in the case of the Ombudsman because the Ombudsman has other ways of dealing with ministries that are unco-operative. In your case, though, you have got the problem that you seem to be putting in a series of measures that are going to correct the problems at the commission, but from the hearings we have had it seems that the problems may not be, in fact very likely are not, of your making but are of an outside making, and private enterprise com-

panies may be harder to get co-operation with than a ministry that knows it can end up before the standing committee on the Ombudsman or some other source of embarrassment if it does not co-operate.

Miss Frazee: There is no doubt about it that the inclination is strong to delay when there is something significant at stake or a potential loss to incur. We do encounter that, and we attempt as a commission to be forthright and firm when it is obvious. But I think that a standardized, as you suggest, and even the applied rule about time frames is probably a much more effective and appropriate way to proceed. The other thing that we have to recognize is that here we are with cases that are becoming increasingly complex from a legal standpoint. It takes some time when lawyers are involved and meeting to prepare detailed briefs and explaining them to their clients and the commissioner is reviewing them. This is not quick or easy work, of course.

Mr Philip: One last comment: I hope that rather than reinvent a wheel, albeit your own wheel—Eleanor Meslin was just an excellent temporary Ombudsman and is an excellent administrator in the Office of the Ombudsman—perhaps your office will co-operate with her and get her advice and so forth on making it more efficient.

Mr Velshi: On a point of order, Mr Chairman: Is that a fair question to ask here?

The Chair: I think he is just saying that he would like them to work together.

Mr Velshi: No, but he is suggesting, he is saying, "I hope you will co-operate." That is, I think, a leading question which could be—

Miss Frazee: I could comment.

Mr Philip: I am just saying that she should get the advice of the other—

Mr Velshi: He is asking you to work with the Ombudsman and lose your independence.

Miss Frazee: We are colleagues and we have already met a couple of times. I have certainly learned from people who have been involved in all areas of case management and intend to learn from their experience.

The Chair: Mrs Marland, I would like to try to share the questions among all members. Mr Philip has just had 15 minutes, so I will allow you the same and then we will move on. Mr Velshi will be after that.

First of all, Miss Frazee, I want to congratulate you on your appointment. I know that there have been a lot of congratulations and accolades in

your direction since the appointment, and I am also aware that those are very well earned. I think that with your appointment there is starting a new era for the Ontario Human Rights Commission.

I also want to add, on a personal basis, that I have been very impressed by your attendance throughout the hearings so far. I think this is a very real demonstration of your personal commitment. I know, if you are spending time here, it only means that you spend extra time back at the office getting caught up with your major workload. I also congratulate you on your presentation this morning about where you see the future goals and objectives of the commission, and certainly I would agree completely and entirely with what your comments have been this morning.

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I want to ask you, since the Ontario Human Rights Commission obviously has a tremendously important public role model responsibility—we have talked in the past number of hearings about best employment practices and so forth. We are also aware that there have been public allegations made against this public agency, and unfortunately there have not yet been any truly public hearings to air those allegations. We have heard from one side of the situation, and unfortunately the allegations have not been publicly addressed. I think that is regrettable, because while the allegations may all be totally baseless and without standing, we are never going to know that because we have only heard from one side and one opinion.

I think if the public is to really know what the true facts are, then it is the desire of this committee, and certainly of the opposition members of this committee, to hold a full public hearing. I know that on 3 October the commission received an order from the Information and Privacy Commissioner, Sidney Linden, to release certain information pertaining to Tanja Wacyk's hiring as director of policy and research. I am also aware that prior to his issuing that order, the head of the institution had counsel to make representation before the commissioner. Can you tell me whether that counsel that appeared before the commissioner is someone who is on staff with the commission or an outside counsel?

Miss Frazee: Sorry, do you mean the counsel who appeared at the freedom-of-information hearing that was in mid-October?

Mrs Marland: No, that appeared in August before the Information and Privacy Commissioner with regard to the request for the

information about the employment of Tanja Wacyk.

Miss Frazee: We were represented by our own counsel.

Mrs Marland: Your own counsel.

Miss Frazee: Yes.

Mrs Marland: That is someone on your own staff?

Miss Frazee: That is right.

Mrs Marland: Okay. Is the commission going to comply with the order?

Miss Frazee: Absolutely, and I think you have a copy of the order, so you appreciate the process.

Mrs Marland: Yes, I do.

Miss Frazee: The process is that we not release anything until 30 days have lapsed, and during that 30-day period, third parties have the opportunity to apply for a judicial review of the decision. If there is no such notice, we will release.

In fact, I have reviewed in detail with the executive director and with counsel all of the material and the severances that were necessary for the release and have authorized the release of additional information, which while not directly ordered in the order, because of the jurisdiction of the Information and Privacy Commissioner, still is relevant and of interest to Mr McAuliffe, who made the application and who raised the question. So the answer to your question is yes, we will be releasing fully, assuming that there is no notice for appeal.

Mrs Marland: I think the appeal date expires tomorrow.

Miss Frazee: I think it is tomorrow. That is right.

Mrs Marland: Are you aware of whether Miss Wacyk is going to appeal the order?

Miss Frazee: I am aware that she is considering it. However, I am also aware that there is no decision from her yet.

Mrs Marland: It mentions that when the hearing took place with the Information and Privacy Commissioner, she was also represented by counsel.

Miss Frazee: That is correct.

Mrs Marland: Was that her own counsel?

Miss Frazee: Yes.

Mrs Marland: And paid for by her?

Miss Frazee: No. I believe that was paid for by the commission, the reasoning for that being, if I can anticipate your next question, that the

event and circumstances which gave rise to this inquiry occurred in the context of her employment and the fulfilment of her duties for the commission, and for that reason it was deemed appropriate for the commission to pay for her counsel. However, it was felt that she had her own interests separate and apart from the commission's, and that therefore separate counsel should be retained. That is outside counsel, not commission counsel.

Mrs Marland: Right. Since that has been the decision of the commission, has the commission directed you or the executive director to give Miss Wacyk direction as an employee? Is the commission giving her any direction as a staff person in your employment?

Miss Frazee: No, not in the context of this particular application for information. The information technically is hers, and in fact the Information and Privacy Commissioner acknowledges that in his order. He says this is private information. So we would not advise or instruct her on the handling of that information.

Mrs Marland: Okay. In the Amin-Gordon report, under the section about the director of policy and research, in the conclusions, in addressing that particular job competition, it says that the competition should have been cancelled and begun anew. Have you taken any steps to redo the competition for that particular job?

Miss Frazee: The steps that we took as a commission, we spent a good long and soul-searching time reviewing the full contents of that report. I think the most relevant decision, to your current question, is that we decided that it was not in the interests of the commission or of the public of Ontario to reopen competitions for positions which are currently filled with the commission.

Mrs Marland: I am not dealing with any other competition. I am dealing only with the competition of director of policy and research very specifically, because that is the only place in the report where their recommendation is very firm, that it should have been cancelled and begun anew. Are you saying that you do not plan to take the recommendation of Amin and Gordon in their report then?

Miss Frazee: Actually, I guess what I am saying is that my interpretation of what you speak of as a recommendation and our interpretation, as chief commissioner and commission, may differ from yours. I regret that I did not come armed today with the Amin-Gordon report. I might want to take a quick look at it to explain to you

why we have taken that position. I can certainly do that if you wish. I ought to look at it.

Mrs Marland: In any case, there has been a decision made since the Amin-Gordon report not to redo any of the competitions at all.

Miss Frazee: Except where there are vacancies, obviously.

Mrs Marland: Right.

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Mrs Marland: Right. How do you feel? Are there any other areas of this report that you would like to comment on? Maybe I should ask you this another way. In my opinion, it is difficult for you to answer a lot of questions dealing with what existed before you were chief commissioner, because you were not in that position, although you certainly were with the commission, I realize. Do you think there would be a benefit to this committee to have before it the former chief commissioner or other people who have worked with the commission who have the experience on the inside in terms of administration that you obviously cannot have at this point?

Miss Frazee: You are asking me for my personal opinion and I am happy to give it to you, but with the caveat that it is my opinion. I feel quite strongly that the public has the relevant and significant knowledge of the failure of the commission to meet its standards, to meet its obligations in terms of mandatory employment equity. I see that as being the pivotal issue that was addressed within the Amin Gordon report or that was the catalyst with the Amin Gordon report that was the subject matter of a great deal of attention some time ago.

We acknowledge that, the public knows that and we are now doing something about it, having learned the lessons of history. It seems to me, and as I say I feel quite strongly, that any further revisiting of the past is and would be severely disruptive to the commission, which is rebuilding, which is moving forward and which is, quite frankly, a delicate and overstressed institution. I guess my personal request and plea to this committee would be to give us a vote of confidence to get on with that agenda.

Mrs Marland: We have not yet heard from anyone who actually works in the human rights field in terms of the people who work with the code, who litigate the code. We have heard from a lot of groups. You know the groups. I am not going to waste your time summarizing who those groups were.

Mr J. B. Nixon: Point of order. Just so that the commissioner understands, we have heard from

a group of lawyers and paralegals who act primarily in the human rights area. They have been before the committee. It is the intention of the committee at some not-too-distant future date to hear from some officers of the commission itself who are involved primarily with intake and initial case investigation. We have heard, as you know, from witnesses who have had personal dealings with the human rights commission. So I think it is fair that you know that and understand that we have heard from a variety of people, notwithstanding the suggestion to the contrary.

Mrs Marland: I am not asking you the question about people who have had personal dealings, where obviously that is the fact. I am asking from the point of view of people who have worked on behalf of the human rights commission in terms of litigating the code or the investigation of cases, people who have actually worked on behalf of the agency in the field.

Is there anyone or any group of people whom you think we could learn from hearing from? You are the first person with the commission whom we have heard from. Is there anyone else associated with the commission whom you think we could benefit from hearing from, or should we just depend totally on groups outside of the commission itself?

Miss Frazee: That is an enormous question, because I think it goes to the heart of the mandate and terms of reference and scope and agenda of this committee. I am not sure that I can really answer it without engaging in a much fuller question and answer about how you see this committee structured and what objectives you have for the committee.

I guess the one sort of immediate thing that comes to mind is that I see my role here as being the spokesperson for the commission. It is certainly clearly consistent with that role that if you have questions which are of such a level of detail that I cannot answer them, then I will seek and obtain those answers for you. I would certainly not want you to feel that you are operating in a vacuum, that you do not have all the information you need to do your job, but I would hope that I could facilitate that as the spokesperson for the commission.

Mrs Marland: So if we wanted to invite someone from your staff who is in the legal department, for example, who is actually working with the code for the benefit of the appellants, you would find that quite acceptable.

Mrs E. J. Smith: On a point of order, Mr Chairman: I do not think I have heard that at all.

Miss Frazee: Should I answer that?

The Chair: Go ahead.

Miss Frazee: I think that if you could identify for me the particular concerns and nature of questions that you have in mind that you would like to ask of such an individual, it is conceivable that some of them I might be able to answer myself, and those that I could not answer, I would prefer, my first choice would be, that I conduct myself and provide the service to this committee of a spokesperson for the commission. I would therefore seek out the information that you are lacking and present it to you in a way that I hope would be good.

The Chair: Could we move on now to our next questioner.

Mr Velshi: Miss Frazee, thank you very much. I enjoyed listening to your four fundamental values and what priorities you place on what you are supposed to be doing. Perhaps just as a preamble in terms of some of the questions that have been asked, certain colleagues of mine have requested you to be in touch with the Office of the Ombudsman. I think it is important that your office does remain independent, and absolutely independent, and it must be perceived to be so and not have any relationship with other matters.

Another question was asked about the past members of the commission. I think you are representing three different time frames here. You are part of the past, you are part of the present and obviously part of the future. I am quite comfortable that when I listen to you talking, you are representing the commission in all three time frames.

One of the questions relating to the past was the employment equity matter that you spoke about. I am glad you mentioned the fact that the additional funding has allowed you to emphasize the systemic discrimination unit. I think of the \$3 million given by the Ministry of Citizenship, \$1 million was directed specifically towards the systemic discrimination area.

You have alluded to that and my question is in terms of that. I presume with the seven extra case co-ordinators and the 14 officer positions that you are looking at we will not see a repetition of the same thing that created all these problems for the commission. I think I am satisfied.

In terms of the systemic discrimination side, is your commission drawing up the ground rules for that, or do you have something in place right now?

Miss Frazee: Obviously, we have a systemic unit. We have a director and we have officers

who have been doing some of the work for the unit, but we will be actually formally staffing the unit over the next couple of months. We have developed job descriptions that recognize the degree of specialization and expertise which is required for an officer working in the area of systemic investigations.

We have developed a model for the systemic unit which takes into account the need for data analysis and expertise in that very technical area, the need for, obviously, teams of investigating officers, because you do not go in to do a systemic investigation singlehandedly. You really have to have a team of two. Sometimes when you are taking on a whole sector, you may need a much larger team of officers to address a major sector.

In addition, within the systemic unit, we will have and we require individuals whom we will call consultants. Specifically, at present, the vision is that there would be two consultants, one specializing in the area of employment equity and one specializing in some of the very technical and specific aspects of equality for disabled persons, the special requirements of accommodation and technical supports, physical demands analyses, etc. That is sort of the overall structure and those are the types of positions that we will be filling within the systemic unit.

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The other part of what I hear you asking me to address is the actual priorities, the definition of strategy for the systemic unit. Right now the primary area of enforcement strategy that the unit is working on is the enforcement of our accommodation guidelines, which were produced last month, last September.

The commission, however—and I am speaking of the body of commissioners as well as the agency of staff persons—is actively engaged in consultations, meetings, encounters with a variety of community groups and helping those groups to identify what their priorities are, what their key concerns are, so that the commission will be able to make an informed ranking of priorities for systemic investigation, keeping in mind the objective of high-impact cases where we have a good likelihood of success.

Mr Velshi: Do you think you need employment equity legislation enacted or are you quite satisfied that your own guidelines will be sufficient for you to handle what you are going to be facing and coming up with in the future?

Miss Frazee: I guess there are two parts to that answer. We interpret section 10 of the code to be broad enough to embrace the principles of

employment equity, and section 13, the special program section, speaks to the same principles in some ways as employment equity. However, the commission has gone on record and remains convinced that mandatory employment equity legislation is both desirable and essential for the full realization of that objective in the province.

Mr Velshi: Just a final comment on your comment about not revisiting the past and those people who are employed will remain. Personally, I am glad you have taken the high road on this one. I think it would create a lot of bitterness and hard feeling if you were to take any other way out of this one. We are sorry to see it happen, but we are glad that you are recognizing what has happened.

The Chair: I have a couple of questions with regard to one of the last questions with regard to the pay equity policy. There has been a report released on that, has there not?

Miss Frazee: Sorry. On pay equity, you say?

The Chair: Yes, on recruitment and selection; the Amin-Gordon report.

Miss Frazee: Yes.

The Chair: Out of that there was no employment equity program or process commissioned.

Miss Frazee: Right, yes. There is now an employment equity policy, and consistent with that policy, we are developing an employment equity program, which is the actual numbers, the goals and the timetable for achieving those goals numerically.

The Chair: Is that policy public?

Miss Frazee: Yes, the policy is public.

The Chair: Would this committee be able to get a copy?

Miss Frazee: Absolutely. I can leave one with you have today.

The Chair: Thank you. Later is all right. The other question I had was with regard to the memorandum of understanding. Can a copy of that be provided to us?

Miss Frazee: Not at this point, because it is still in draft form. It has been worked out by myself with the minister in draft form and now it has been assigned to a subcommittee of the commission to review and make its final comments, so I would be reluctant at this precise time to release it. We expect to have it finalized very soon.

The Chair: Is this mainly your report to the minister to try to get in place a policy that you feel would be fair and equitable to all?

Miss Frazee: Actually, the memorandum of understanding is essentially the terms of reference for the working relationship defining the independence, the arm's-length relationship of the commission, and the areas of specific accountability and outlining the roles and responsibilities for executive director, chief commissioner, etc.

The Chair: We would like to have that report before we make our final report, if that would be possible.

Miss Frazee: The memorandum of understanding?

The Chair: Yes.

Miss Frazee: All right. I must say, very tragically, the chairperson of our subcommittee on the memorandum of understanding passed away last weekend, so we will reorganize that committee and ask it to proceed as quickly as possible to finalize the draft so that you can have it in final form.

The Chair: Thank you. We are sorry to hear that.

I have another question with regard to the case load. I think you indicated 1,600 was what the case load is, and approximately 2,300. You are looking for a 10-month turnaround time, really, and I believe that at the present it is around 18 months. Do you feel positive that you are going to get that to the 10 months, and how do you plan on doing that?

Miss Frazee: I feel positive. I feel absolutely convinced that we have to, because we are not doing our job. There were earlier questions about whether there were violations of the code. I really say that the spirit of the Human Rights Code is deeply offended by a process that can extend on for years in achieving redress for a violation of one's human rights, so clearly we must, as a real imperative, reduce the length of that case load.

How do we intend to do it? We intend to do it by taking a very systematic and, if I can use the word again, although it is so frequently used, systemic look at our processes. We will look at the possible amendments to the code. We will look at possible further procedural modifications. We will look at technology innovations. We are looking at enhanced staffing. We are looking at upgraded roles and responsibilities and greater accountability. A status report on the case load is now a standing item on each commission agenda so that the commissioners are directly informed and kept apprised each month of our progress in that regard.

I think all of these measures, and in addition the innovations or the initiatives that we are undertaking in a systemic area, in policy and in communications, in the long haul are going to help us get out of this backlog situation.

The Chair: How many new staff do you think would be necessary to help you achieve that goal?

Miss Frazee: To be perfectly honest, I do not think I can give you a responsible answer to that question. At the current point in my fairly new career, I feel very confident that, with the staffing increase we are facing now and the recruitment process we are going through now, while in itself a very painful experience, because you have to deploy all of your senior resources to be interviewing and screening, etc., and then training, although a pain in the short-term, we are going to see and we are going to feel a significant relief from this staffing initiative and from the budget allocation of 1989-90.

I am also fairly confident that that will not be the end of it and I am hopeful that we will be able to demonstrate responsible use of what we have received and plan for what we need in the future.

The Chair: Are you in the process now of hiring people?

Miss Frazee: Yes, we are. We are currently advertising for 24 positions, I think.

The Chair: That is what I would like to hear, because I think one of the most important functions that you have to do now is to have the people in place to deal with the cases that you have, and you have to do it right, but I do believe it has to be done as soon as possible.

Miss Roberts: The hiring practices you are going through right now are on the basis of your new goals for employment equity, etc., is that correct?

Miss Frazee: It is going to sound like I am hedging here, but I am not; I will give you the full answer. They are consistent with our policy. They are consistent with our direction and everything that we have learned and that we believe in terms of employment equity.

We do not yet have our targets and timetables defined. We did not want to wait to do the hiring. That whole process in itself of working out the numbers is a time-consuming process. It is one that we are operating with concurrently to doing the staffing.

Our employment equity co-ordinator will be with us very soon. That position is being advertised now. That person will be key to helping us to define our targets and timetables,

but certainly as we approach each step of the recruitment process, we are conducting each step consistent with the total ethic of employment equity. As we approach those final decisions, we step back and look at the representativeness of the candidates who are at the top end of the string, and look in our workforce profile, which we have in a preliminary form, and we make decisions, again, consistent with the objectives that we have identified.

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Miss Roberts: You have a very big job that you are dealing with and looking at right now. You have indicated that you are going through a process of looking at your objectives and goals from just about every point of view you could possibly get. Where are you in that process? How long do you think that is going to take? I know some of it is always ongoing, but is it going to be a month, two months, where you think you are going to be in a position that you can say, "Here is our mission; here is our statement; here is our goal"? How long are we looking for?

Miss Frazee: In terms of numbers of months, I think I am a little gun-shy. We are very close to that. We have had a number of preliminary discussions at the commission level and at the senior management level. I think we are nearly there, it is just a matter of bringing the whole group together and stepping back once again from the trees to consider the forest and ink it out as our mission statement and our strategic direction. We are very close. We have a draft document.

The Chair: Do you have a policy in place with regard to frivolous complaints or a policy whereby you deal with them in an orderly fashion? How long would it take to deal with one, say?

Miss Frazee: I will tell you, it is very difficult to define a frivolous complaint. Everyone has his own idea of what is frivolous, and I guess the first thing—and I am speaking from my experience over a number of years as a commissioner making these decisions—is that the alleged act of discrimination, be it a comment or an order or something of that nature, may appear to be very frivolous on its face but consequences are often not frivolous at all. People lose or leave their jobs, feel that they were constructively dismissed or whatever; people suffer emotional traumas and financial losses. So it is very, very difficult—and I have to say it speaking personally—to define a complaint as frivolous.

However, be that as it may, section 33 of the code does allow the commission the discretion to dismiss a complaint without investigation where the subject matter is "trivial," "frivolous," "vexatious" or made in "bad faith." All four of those terms have been legally defined and are in Black's Law Dictionary, and there is case law around what constitutes a trivial subject or a frivolous subject, so we have that kind of information available to us, and in fact there are circumstances in which an officer will make a recommendation to the commission, having just read the complaint form, that the complainant is frivolous and falls within the definition of frivolous and the commission makes that decision. The code requires that the commission make that decision to dismiss, because the implications are quite significant in terms of the possible redress that that person achieves.

I am perhaps going on too long, but I think at the heart of your question I certainly hear and am sympathetic to the sense that at that critical intake stage we need people who can really help to identify if this is a human rights complaint. Similarly, I think we recognize that we need to set some priorities in terms of how cases get moved along; whether it is strictly a chronological "first in the door, first out" basis or whether it is something other than that that we consider.

Mr Velshi: On that point, Miss Frazee, when a commissioner or somebody decides that the complaint is frivolous, is there any second opinion on that or does that close the file at that point?

Miss Frazee: The decision to dismiss a complaint under subsection 33(2) is subject to a request for reconsideration by the complainant. If the complainant has his or her complaint dismissed, he or she can come back to the Ontario Human Rights Commission and request a reconsideration of that decision.

Mr Velshi: Does the same person then look at the file or is it another person?

Miss Frazee: No, it is done by a different branch of our compliance unit.

Mr Velshi: Okay. Thank you.

The Chair: I am sure you have statistics on this. It will be interesting to know how many cases in a year would be classified in that category.

Miss Frazee: As dismissals?

The Chair: Yes; approximately.

Miss Frazee: I will get that for the committee.

Mr Lupusella: If I may, I would like to raise the question, unless it was raised while I was

absent, on the issue of morale within the department. We are all aware, I am sure, that before you were appointed to the commission your department had been going through harsh criticism by the media and the public, and the issue was raised even in the Legislature as well. As a result of that, the morale of your department is extremely low. Since you took office, have you implemented any specific plan to make sure that you would lift the morale of people within the department?

Miss Frazee: First of all, if I may, going back to the last question, I have just checked the annual report. In the last fiscal year we dismissed 14.1 per cent of our cases.

As to the current question, there are a number of very compelling factors contributing to the morale problem, not the least of which is the very onerous and in fact impossible case load that each officer carries, so certainly first and foremost among our initiatives to address morale are our initiatives to address the case load issue and to increase staffing. A number of other things have been undertaken, and at the risk of leaving some out, I can certainly identify several.

We undertook a staff training conference involving all staff in the summer, in June or July. Basically, it was essential to bring everyone together after the crisis; after the change in leadership and after a great deal of negative publicity about the commission. We brought the staff together and undertook to set forth our agenda for the future and allow opportunities for workshops and seminars looking at specific concerns and areas of effort and areas relevant to the work of commission staff.

In addition to that, we have undertaken a number of initiatives in the area of training and development providing information in a consistent and ready manner to our staff, an overall communication strategy, I think, more consciously open and forthright delivery of information to our staff; for example, simple initiatives such as having available to our staff at the end of each day of these committee hearings a brief and independently prepared summary so that people who are keenly interested in the health and wellbeing of the organization can be kept informed in a simple and direct way. Communications and training have been an important part.

Accommodation is a critical element affecting morale. Our employees have been working under truly abysmal conditions that were overcrowded, shabby and inaccessible in many cases, from what I have been told, because I simply cannot get into some of the facilities. I think we have

made considerable progress in obtaining new sites and new, more appropriate facilities for our staff.

In a nutshell, that is the major message and those are the sorts of things. I am sure there are others that will come to mind immediately.

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Mr Lupusella: I have another question which I would like to bring to your attention. I know that in the course of your presentation you touched on a very—I would not say “very aggressive,” but the issue of pay equity, on which I would like to compliment you on undertaking. But one of the problems facing the commission was also the issue of hiring visible minorities and I am just wondering, since you took office, in view of the criticism which faced the human rights commission, if you were able to find a common solution to this specific problem of hiring visible minorities.

Miss Frazee: First of all, I would just want to characterize it in the broader context of employment equity, which hires from the target groups that are unrepresented in the workforce, period, rather than singling out any single target group. Certainly that is—what can I say?—a priority.

We have a golden opportunity right now, with a number of vacancies and a number of new positions being created, to change and significantly affect the representativeness of our workforce and to change the whole dynamic of our organization thereby. We are committed to doing that. The specific strategies for doing that are, I guess, the sorts of things that I have outlined already. Did I come at your question from an oblique angle or did I miss something in your question that I have not addressed?

Mr Lupusella: No, my question was based on the fact that we are trying to eliminate the criticism which your department was faced with in the past. One of the issues, along with others, was the hiring of visible minorities. I understand that you are extremely sensitive to this particular issue and I am sure that you would be able to dismantle all the criticism which might arise in the future by implementing a specific policy which will take into consideration the needs of visible minorities.

The Chair: Where are your headquarters now, where all the people work? You had indicated that you were moving or changing the space. Give us a little background on that. Are you getting new quarters or expanding the quarters that you have, or moving to another building?

Miss Frazee: Just give me one second because I want to give you the right details. Our headquarters are at 400 University Avenue. That is where head office is. So 400 University Avenue is the central office. We also have our legal unit housed somewhere down the road. I am sorry, I do not remember its address, but it is a separate facility because we simply do not have room right now at 400 University to retain it.

The offices, however, that I was referring to as being particularly bad were our field offices, our region offices. St Catharines, which was the worst, moved 1 October to new headquarters. Ottawa, Kingston and Hamilton are all also very bad and they will all be moved by year-end. Kenora is a new branch for us, and a very important one, in terms of addressing particularly native issues within the northern communities. We have identified a location for our Kenora branch. As soon as we hire an officer to staff that post, we will be opening a branch there. With respect to head office, we are currently reviewing our plans, trying to achieve the most economically feasible housing arrangement that keeps as many of us together as we can.

Mr J. B. Nixon: I have a couple of questions about the position of the executive director. Specifically, to whom does the executive director of the commission report?

Miss Frazee: The executive director reports to the chief commissioner.

Mr J. B. Nixon: What is the role of the executive director?

Miss Frazee: The executive director essentially manages the day-to-day operations of the commission and takes leadership and direction from the chief commissioner and, through the chief commissioner, from the commission with respect to areas of policy and general direction for the commission, priorities and overall mission and direction. That sort of stuff comes from the commission, through the chief commissioner to the executive director.

The executive director reports each month to the commission, the full commission, on the internal matters of the organization. The commission is currently contemplating and in fact proceeding with the establishment of standing committees which, I think, will reinforce that link and the commissioner's or the commission's taking control of the organization and being fully apprised of and accountable for its activities. All of that is part of that reporting relationship.

There are specific areas that are delegated through the deputy minister to the executive

director and those also work mutually with the chief commissioner and the deputy minister.

Mr J. B. Nixon: I think it is a couple of years ago now, as I understand it, but in the past the executive director reported to the deputy minister. Was that reporting relationship in existence at any time when you were a member of the commission?

Miss Frazee: Yes, it certainly was. That was in place when I first joined the commission and for my first full term of three years, give or take a month or two, that was the situation.

Mr J. B. Nixon: Did you find it awkward?

Miss Frazee: It was fraught with problems. The commission essentially was marginalized. Our chief commissioner was located in separate facilities, severed from the organization and from the administration of the organization, and you never really had the sense of control or even meaningful involvement in the operations of the agency.

Mr J. B. Nixon: The Amin-Gordon report, I think it was, suggested that to some extent there had been a blurring of the responsibilities of the executive director and the chief commissioner. Would you care to comment on that?

Miss Frazee: I think that is correct. Essentially the acting executive director, Janice Service, and I have been working very closely together to define our roles, and I think the fundamental principles of that definition will be contained and articulated within the memorandum of understanding which is currently being developed.

I think the important principles that we have operated with are, first, full communication between the two individuals so that the chief commissioner is aware of what is going on within the organization and has an opportunity to participate and intervene where it is appropriate in senior decision-making. On the other hand, it is at the chief commissioner's discretion, of course, to delegate responsibility where it is appropriate to do so.

Mr J. B. Nixon: I just want to clear up one factual matter. You are preparing a new memorandum of understanding. Prior to these preparations, there was a memorandum of understanding in existence, was there?

Miss Frazee: That is a very interesting question. My impression is that it had not been perfected under the former administration; it is a dim recollection, but I do not believe it had been completed. It certainly had been drafted, but I can say with some certainty that it was not done, because it did not come before the commission.

Mr J. B. Nixon: When do you expect the present preparations to be finalized?

Miss Frazee: Very soon. It has been identified as a high priority. We have a good working draft of new and valid questions that some of the commissioners have raised and will be addressing in subcommittee. I would like to say it would be within a month, but it probably will be our December commission meeting before we can have the opportunity to fully ratify the document.
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Mr J. B. Nixon: I would like to go briefly to another area. There was some suggestion by one of the report presenters—and I cannot remember whether it was Coopers and Lybrand or Amin-Gordon—that the commission itself, the commission of the commissioners, should be operating more as a board of directors. I do not know if you were present for that presentation, if you recall it.

Miss Frazee: I saw it on TV.

Mr J. B. Nixon: I had difficulty understanding what they meant. Maybe you understand what they meant. More important, do you have any views on how the commission of commissioners should operate?

Miss Frazee: When I made reference to what is, I think, a really important initiative of the commission, to organize itself within committee structures, that is an initiative that goes to the intent of the auditors or the consultants. Neither do I remember which report it came from, but it certainly goes to the intent of that recommendation—that the operation, that the decision-making and that the involvement in setting direction and disciplining the organization—be one that may well be executed through committees which are comparable to a board of directors model.

Mr J. B. Nixon: I see. One further question: Would you have any problem putting before this committee the memorandum of understanding once it is finalized?

Miss Frazee: Absolutely no problem at all.

Mr J. B. Nixon: Certainly, we might be interested.

The Chair: I have asked for that.

Mr J. B. Nixon: Okay, thank you.

The Chair: I have one further question, and then Mr Philip. Your executive director, how long has that person been in that position?

Miss Frazee: Janice Service came on, I think, the day before me, which was early June—1 June roughly—and will be with us until the end of the year.

The Chair: Who was the previous executive director?

Miss Frazee: Mike Gage.

Mr Philip: My question is, do you have a time frame when you will be able to report on your initiatives on systemic discrimination? When will we have a report with examples?

Miss Frazee: If I can just clarify the question, I expect you mean real cases that have moved along and been investigated and been resolved.

Mr Philip: Yes.

Miss Frazee: At this point, the quick answer is no, I cannot tell you when that would be, the simple explanation for that being that it is very difficult to predict how long an investigation is going to take place and what sort of resolution will be reached at what point in that investigation or whether it is going to have to go to a board of inquiry. Probably more meaningful and more immediate for your purposes would be a review of the mission and a statement of the priorities and strategy for the systemic unit.

Certainly—I cannot recall whether you were in the room at the time I was discussing it with, I think, Mr Velshi—the systemic unit is currently very actively involved in the enforcement strategy for our accommodation guidelines affecting persons with disabilities and will be taking the lead in a number of areas relevant to that section of the code.

Mr Philip: You anticipated my next question. I assume, from the information you provided to me in your letter of 11 October, that housing would be your first major systemic study. Is that correct?

Miss Frazee: There is an interesting point to clarify. When we speak of accommodation in the context of the Human Rights Code, we are referring to something other than housing. What we are referring to is the duty to accommodate a person who because of a disability or a particular creed or other aspect, but in this context because of—

Mr Philip: So it is employment, housing and a variety of things?

Miss Frazee: That is right. It is the provision of special supports and services.

Mr Philip: I suppose you have identified other areas. Do you feel comfortable enough to share with us what some of those other areas of systemic investigation might be?

Miss Frazee: I think at this point, until we have had the full discussion at the commission, I would prefer not to go too far into attempting to

prejudice what our priorities will be in terms of which targets we will take on, what sorts of leading cases we are going to start out with, if that is what you are asking.

Mr Philip: In terms of timetables again, you talked about numerical affirmative action or affirmative action by numbers, if you want, which I gather is compulsory affirmative action or whatever. Do you have a timetable for that? Do you have any specific objectives or goals, say, a two-year timetable, five-year or whatever, that we can say in two years, or you can say—which is more important perhaps—that you have met your objective?

Miss Frazee: Definitely, we will have an employment equity program which is defined numerically in terms of representation at all levels of the organization and time frames for achieving that goal.

Mr Philip: And we will be able to obtain that in the near future? Fairly soon you will get that out to us?

Miss Frazee: Yes, we will provide it to you as soon as we have completed the data analysis and workforce study. That may need to come after we have an employment equity co-ordinator in place, because I think appropriately that is something we want that person to do.

Mr Philip: That is reasonable.

I wonder if you can help me with section 25. I am not a lawyer and I want to understand what the implication of that is in terms of systemic discrimination. How does that kick in? Is it strong enough? Maybe that is too general a question.

Miss Frazee: I am taking my time with it because we do not use section 25 very often, so I want to give it a quick review and see if I am competent to answer or not.

I think the best and most responsible thing for me to do, sir, would be to suggest that I get a quick assessment from our legal department. Essentially your question is—perhaps I could ask you to repeat your question for me and I will make sure I get a clear answer.

Mr Philip: I guess I am concerned that—let me put it in a different way. Maybe we can have some advice from our legal counsel here. When I look at some of the programs that have been successful in the United States, in terms of affirmative action, in terms of dealing with systemic discrimination, I see that various US governments, be they state or central, have programs in which companies that are guilty of human rights violations or that do not have

affirmative action programs simply are not eligible for government contracts. I look at section 25 and I do not see as strong a vehicle in dealing with that problem. I am wondering exactly what powers you are using under section 25 and what is the value of section 25. Should it be beefed up? Is it of any use? Are you using it at all?

Miss Frazee: Very rarely. I can give that answer without any research or consultation. Beyond that, I would be commenting gratuitously. I will explore with counsel the application of that.

Mr Philip: I guess when I have met with some of the human rights activists in the United States, they seem to say that while there are some very excellent corporations that have done, on a voluntary basis or maybe in a self-interest—if they have a large consumer population out there, it is good for them to be known as good corporate citizens, be it in terms of the environment or in terms of affirmative action or in terms of any one of a variety of things that the population may be interested in as consumers. But that in the case of some companies that have less dealings with the general consumer public, often the way to get compliance is to hit them in the pocketbook and say, “If you are in violation of a human rights provision within the last three years, you are not eligible for any government contract,” or “If you do not have an acceptable affirmative action program, you will not be one of the companies that is allowed to bid on this type of contract.” That acts as a very strong motivating force.

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The members of the board of governors of the corporation are concerned about that. If it is a public company, the shareholders are concerned about it, and even if it may not be selling products in grocery stores that people can boycott because they are not happy with the corporation's performance, there is still motivation on those less public or less visible corporations.

I guess when I look at section 25, I see something where somebody seems to intend to do something good but I do not see very much happening.

Miss Frazee: Right, and of course the piece that is missing, if I follow your comments, is that there is the positive obligation to undertake employment equity or affirmative action or whatever the phrase may be. Clearly, section 25 refers to the necessity not to be in violation of section 4, which is the equal treatment section, but it does not go further to require special

measures or special programs under section 13, like an employment equity program.

Mr J. B. Nixon: I just had a brief chance to look at section 25. I am certainly not an expert nor am I licensed to practise law, but really, I would think that section 25 is devoted to a different issue and problem than the one you are getting at, Mr Philip. That is not to suggest that the problem you want to get at should not be got at, but you really need a new section, I think, rather than trying to twist or pervert section 25.

Mr Philip: I guess Mr Nixon and I are kind of in agreement. I guess what I am saying is that section 25 does not do a heck of a lot, and either you amend section 25 or you put in a new section that will give you some teeth or that will make it obligatory on government ministries in some way to—

Mr J. B. Nixon: I would go even further and say that whenever the code was drafted, and I do not know when it was, they probably did not even consider the problem or issue that you are raising. All they were saying is that contracts and guarantees shall not offend the code.

Mr Philip: I think that is a good point. The point is that since the code was drafted, we have had the experience of the human rights movement in the United States and of some fairly progressive American legislation, in some ways. Maybe it is about time that we started looking at some of the good things the Americans are doing—we seem to always dump on them for all the bad things—in this field and see what can be implemented in this country.

I have raised this with successive ministries, mainly with chairmen of Management Board of Cabinet and the Ministry of Government Services, but it may well be that the route is through the Human Rights Code. I do not know. I would be quite content if the government simply said, "We are, through regulation, in terms of contracting, have these rules as requirements under our contract." But I have not been able to get the previous Conservative government to agree to that, and certainly I have not been able to get the present Liberal government to agree to it. If those ministries do not want to do it, maybe it is something that should be done through the Human Rights Code.

I will leave it at that.

One of the interesting things that has been brought out in your reply to the Coopers and Lybrand report is that you are discussing initiatives in terms of communicating with your various constituencies. You may have covered this earlier when I had to go briefly to another

meeting, but part of the problem, I guess, of the Ontario Human Rights Commission and, indeed, of any of these bodies is making the people whom you are monitoring understand what you are doing and also making the people who may be complainants understand what the process is and what can and what cannot be done.

I find that an awful lot of people come to me with what they think is a complaint against the Human Rights Commission. They went to the Human Rights Commission and they said, "The Human Rights Commission said they could not do anything for me;" and when I find out what their complaint is, it is not covered under the Human Rights Commission, and it should not be, because there are other avenues to deal with it through the labour relations system or some other system.

But I am wondering, have you got examples of initiatives which you may be starting in terms of communication with the public and with the corporate world and so forth?

Miss Frazee: Yes. Let me make a couple of general comments. Certainly, the commission is of the view that this is a major area of opportunity for commissioners to be involved in the kind of outreach which goes to, I think the word you used was "constituencies." And we define constituencies very broadly, as representatives of the potential complainant, potential respondent and government communities. So we certainly see our role as commissioners in being much more active in listening to what those groups have to say and in sharing with them our interpretation of our jurisdiction and our direction and initiatives currently under way.

Now, specific things that come to mind, again in the context of our recently launched accommodation guidelines, you will appreciate, having had an opportunity to review that document, it is a fairly lengthy document and enters into some rather complex and also, if I may say, rather radical changes which are contemplated by the duty to accommodate, short of undue hardship.

We have seen a very compelling need for the commission to be out there in the community communicating the existence of the guidelines and helping groups to understand what the guidelines mean to them. We had a public forum in Toronto approximately a month ago, to which were invited representative spokespersons from a number of community groups, who had an opportunity to review the guidelines and to comment on how they might apply. Myself and a commission counsel were present to answer questions from a large number of people about

what rights they might now achieve through the guidelines and through the interpretation of section 16 of the code, and others who were inquiring from the standpoint of what responsibilities were now clarified and explicit within the recently amended code. That sort of initiative is being carried around the province to make sure that the broadest number of people have access to that information.

The other thing I would just quickly say is that in the very development of a policy guideline, we engage in an extensive process of community consultation, where a draft document goes out to a whole slew of agencies, organizations, ministries, etc for their comment and for further discussion and input. That is also a part of that process.

Mr Philip: I am sure I will have some questions during your estimates on this, because I just received the document a few days ago and I have not had an opportunity to study it in the way in which you indicated I had. Therefore, I would rather not deal with something that I have not studied.

But on the outreach, would you have a handle on how many of the complaints you get are actually nonjurisdictional? How many people go to the Human Rights Commission with complaints because they do not understand what you can handle and what you cannot handle? I think that is one of the problems.

Miss Frazee: Yes.

1150

Mr Philip: People just do not understand that there are some things that you have a right to investigate and others that you do not. They go away simply saying, "I went there and I didn't get anything done," not realizing that it is not your fault, that you are not supposed to examine that kind of complaint.

Miss Frazee: You are quite correct. I guess the quick answer to your question is that we do not at present have a statistic to convey to you simply because, at the intake level, we have not been documenting those upwards of 70,000 inquiries or calls that we receive in the course of a year. That is last year's statistic.

Certainly the huge spread between those 70,000-plus inquiries and—what is it?—the 2,500-odd actual complaints that were filed with the commission is indicative of a number of things. Most significant, and germane to the point that you have made, is the fact that the public perceives human rights, I think because of the

very nature of the phrase and what it conjures up—

Mr Philip: We are human.

Miss Frazee: Yes, that is right. It conjures the definition as being much broader, and there are much greater expectations of the commission than are consistent with the legislation. I think that is clearly something that we need to address in terms of our communications and outreach. When I spoke earlier about an aspect of our accessibility being the use of plain language, I think that is part of it. I think, in our basic brochures, literature and statements, we occasionally need to step back from what we know quite well because we are so intimately involved with it and talk about: "What are human rights? What is a human rights commission?"

Mr Philip: Maybe there is a need in government advertising to explain what the different places are that you go to with a complaint.

Miss Frazee: Yes.

Mr Philip: If that were done, maybe you would not get as many complaints where you have to say, "No, here's the address that you go to with this type of complaint."

I just wanted to say that I was not one of the ones who wanted to rush into this inquiry, for the simple reason that I thought you needed some time to be in the job and to respond to what I think is a fairly reasonable, albeit somewhat general, internal investigation by the ministry. From what I have heard in your initial statements, you seem to be responding.

I think we have to give you some time to actually put your changes in place. I just want to wish you the best of luck and support, since you certainly seem to be attempting to go in the right direction and you certainly seem to be responding to the criticisms that have been made of the operation. We wish you luck in the reforms that you are implementing.

Miss Frazee: Thank you.

Mrs E. J. Smith: I am a substitute on this committee and new to it in many ways. Other than seeing the chief commissioner sitting in the background, this is my first opportunity to have heard from her. May I add my thanks, appreciation, vote of confidence and wishes for God-speed. I think you are off on the right track and we all appreciate the challenge in front of you.

Mr Velshi: Miss Frazee, just a little question here. When you are compiling all your statistics on different types of complaints and all that, have you in place the compilation of statistics of who the perpetrators of all the problems are? I tell you

why I say this. It is not because I am trying to identify any particular group, but sometimes one particular group feels that a finger is being pointed at them all the time.

I do not suspect it is any one particular group, but it may be good to know who is doing this and why they are doing it if a profile is developed so that we can eventually attack that type of problem.

Miss Frazee: Certainly it is anticipated in our technology plans for case monitoring. We will really need that kind of data to look at sectors or industries and to be able to see a pattern or a high volume of complaints directed in a particular area. That is an essential part of how our individual complaint process will feed our systemic unit and help to identify priorities for that unit.

At present, and I am venturing a little bit out on a limb here, I would venture to say that we may have that information, although it may require some manipulation. It may be in less than the

perfect and reliable form in which I think we would want it.

The Chair: I have one further question—I realized it after you had answered it—with regard to the executive director you said started a day before you and his term expires at the end of the year or something.

Miss Frazee: Essentially at the end of the year. We have an ad out now, or at least I have approved and sent the ad forward, for a permanent executive director. I think it is being translated now and will appear in a multitude of media in the very near future.

The Chair: If there are no further questions, I want to thank you for appearing today and look forward to knowing that you will be here next week also. If you would like to come back at a later date, we would be pleased to have you.

The committee is adjourned until 10 am next Wednesday.

The committee adjourned at 1156.

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Wilson, Jennifer, Research Officer, Legislative Research Service

Witness:**From the Ontario Human Rights Commission:**

Frazee, Catherine L., Chief Commissioner



No. A-2

Hansard

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Legislative Assembly of Ontario

Standing Committee on Government Agencies
Ontario Human Rights Commission



Second Session, 34th Parliament
Wednesday 8 November 1989

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Clerk of the House: Claude L. DesRosiers

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday 8 November 1989

The committee met at 1006 in room 228.

ONTARIO HUMAN RIGHTS COMMISSION (continued)

The Vice-Chair: I think we will get started since it is 1005 and we have a quorum. I would say good morning and welcome. This is the Ontario Human Rights Commission subject before the standing committee on government agencies. Today is Wednesday 8 November 1989, and our first deputation is David Baker from the Advocacy Resource Centre for the Handicapped.

Welcome, Mr Baker. If you would make yourself comfortable, we will enjoy your presentation. I would add that you have half an hour of presentation time and you can use it whichever way you wish. If you want to use part of it and then leave time for questions, that would be great.

ADVOCACY RESOURCE CENTRE FOR THE HANDICAPPED

Mr Baker: Okay, that is what I will try to do. I represent an organization called the Advocacy Resource Centre for the Handicapped. ARCH is a legal centre funded in part under the Ontario legal aid plan. We have a board which has representatives from 38 disability organizations, most of them provincial, and we have considerable experience in dealings with the Ontario Human Rights Commission.

In considering how to crystallize in one picture, if you like, our concerns about the commission, I thought long and hard. I would like to start with is a description of the day I went to a meeting of a group called DAWN, which is the Dis-Abled Women's Network. They were discussing issues and I promised myself I was going to sit back and listen because these were women's issues and I was not claiming to be any authority on women's issues; I was going to listen and learn.

At one point in the discussion, the panellists and audience had reached a point where they just could not find a solution to a particular problem. I broke my promise to myself, put up my hand and said, "You could file a human rights complaint." It seemed obvious to me and I sat down quite pleased with myself that I had found this solution

to their problem, but I was not prepared for their response, which was sort of a disgusted silence. I wondered what I was seeing and hearing by way of a response, so I asked for an explanation of why they did not think that this wonderful solution, put forward by a human rights lawyer, was going to resolve this problem.

One of the panellists took it upon herself to explain what everybody else was thinking and said: "The Human Rights Code is great, the words are great, but we know from experience and we know people personally who have filed complaints. They are getting no action on their complaints, they are upset by the process and feel they are victims of the process itself. So what you are suggesting to us is to engage in a meaningless process. We would appreciate it if you would sit down." Basically, what they said was, "Shut up."

I went home. For a human rights lawyer this is quite a blow, because you are being told that what you are holding out by way of hope and service, in effect, to the disabled community is not an effective remedy to the problems being experienced by disabled people. I thought about it for a while and I certainly started to consider the cases that we were involved in with the commission. It began to ring true. You get so locked into doing your work for your client and doing the best you can for your client that you forget about the larger picture sometimes. So I started to go through the files and I realized that most of the files we had go back four, five and, in some cases, six years without even having gone to the commission.

One file in which we are involved was the case of Mytrie Prashad, a woman who had an epileptic seizure while at work and was fired by her employer. She filed a human rights complaint. The complaint was investigated by the commission. In fact, in this particular case it only took two years for the matter to go to the commission and the decision was made by the commission to appoint a board of inquiry.

In our experience, that was one of the fastest cases in which we had been involved. The respondent brought an application in Divisional Court to have the decision to appoint the board of inquiry quashed, on the basis that the delay involved caused prejudice to the respondent, that

is, the employer who had fired this woman. That decision, that application was granted by the Divisional Court. They quashed the appointment of the board of inquiry and my client lost her right to her human rights complaint. The decision of the Divisional Court was upheld by the Court of Appeal and leave to appeal was refused by the Supreme Court of Canada.

So, in a nutshell, a woman who has every reason to believe that she had a valid human rights complaint was denied her right to have that complaint heard by a board of inquiry because of delay causing prejudice to the respondent or the employer.

I should say that we have requested that the commission compensate Mrs Prasad for her loss of her right to sue. We have asked the commission to do that. That issue has been before the commission for more than a year now and we have not yet received a response. But I have thought about it in the context of what do I tell my clients who have been waiting six years for an answer from the commission when a respondent is able to have the case thrown right out, and in effect decided against the complainant, on the basis of a two-year delay.

There is no remedy that I can think of that the courts can grant. The courts cannot say, "Mr Baker's client, you win your case because of the delay and the undue prejudice you have suffered as a result of the delay caused by the human rights commission." They cannot find against an employer, but we do not have a practical remedy other than coming here to you and saying, "The system is not working."

As an organization, what we have said is: "We're not in any position to go to the commission with new cases. We have files full of cases which are old and dusty. We forget what the people look like and they're angry at us. We need to do something about that." So I put it to you in a nutshell that what we have here in Ontario is the worst of all possible worlds. We have the best Human Rights Code in the country and maybe in the world, the best for disabled people. We have the worst enforcement mechanism because the commission has not been able to do what it should be doing.

I would like to paint a second picture for you in terms of analysis as to where these problems may be coming up. One day I was called down to the commission for a meeting with the lawyer for the employer on a particular case and I was sitting in the reception area at 400 University Avenue. In the reception area there is at one end of the hall, outside the elevators, the human rights commis-

sion receptionist and, at the other end of the hall, the receptionist for another branch of the Ministry of Labour.

The Ministry of Labour's receptionist was sitting there reading a Harlequin romance; the phone did not ring from one minute to the next. I watched this human rights commission receptionist, who happened to be a disabled woman, work incredibly hard, stacking calls like you would not believe, putting messages in slots, giving people advice in dealing with the kinds of concerns and complaints that, I am sure, disgruntled complainants would be likely to bring to the commission. I watched this person sort of dealing with the commission's problems.

For me that visual picture, if you like, is the commission in a microcosm—that the commission has a terribly difficult job to do. Their employees, generally speaking, are accorded low status, there is not much prospect for job advancement for them and there is a terrific lack of resources and yet they are expected to work extremely hard and under difficult circumstances—including dealing with me and complainants' counsel, but more particularly the highly sophisticated lawyers who are hired by respondents—and they are not given what they need in order to accomplish that.

In particular, I would hope that you might recommend that resources be provided to the commission to fill the very, very important position of executive director at a higher level than has been possible in the past. That is a crucial position. If that commission is to be well managed, that is a very important appointment, when and if it is made. I gather the acting executive director will be going back to the Ministry of Transportation in January. So it is something which is of immediate concern.

The third point ARCH wished to make was that we understand very well the criticism that was directed at the commission for not having an employment equity plan in place when hiring the senior managers. There is no question that was wrong on the part of the commission; however, I would suggest that the commission requires assistance in order to practise what it preaches. In particular, we are concerned that complainants with disabilities face a number of systemic barriers in dealing with the commission. I do not think we would want to be so hypocritical as to say that we are perfect. We certainly recognize that your parties are not perfect, and government offices are not perfect, so to criticize the commission for not being perfect seems somewhat hypocritical.

But none the less, we do feel that the commission has a duty to practise what it preaches and to be a leader in these areas. Therefore we would request that the government provide resources to the human rights commission to allow it to conduct an external audit of the systemic barriers faced by complainants coming to it. I would include others than disabled persons, but I would suggest to you that kind of externally conducted audit is necessary and I would request that the funds be provided with the condition that the audit itself be made public; not because we seek to embarrass the commission, but in order to demonstrate to the government what resources are needed by the commission to allow it to practise what it preaches.

The fourth and final point I wanted to make on behalf of ARCH concerns a general comment. There are resources issues and there are management issues within the commission, and we are obviously not qualified to comment on all of them because we do not have the necessary information or expertise. However, there is an observation I would make, and that is that the commission exists within the larger political context of this province and frankly the commission is overwhelmed by the expectations of groups such as the disabled community. It is being overwhelmed and I do not think it is entirely the commission's fault and I do not think it is the kind of problem that can be addressed totally through better management and increased resources.

Since including, in 1981, disabled persons as a protected class, disability has become the largest single basis of complaint to the commission. That passed largely unnoticed until Mr Anand came in and started to confront issues of systemic discrimination, which are of primary concern for disabled people, as part of the efforts of the Ontario Human Rights Commission. It is our observation that since the period of minority government ended, the government of the day has slipped back into a reactive method of responding to these issues, kind of pressure politics. If disabled people cannot show us that they have got the votes, then we are not going to approach things on the basis of giving disabled people their human rights.

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What I am saying in a nutshell is that we would ask that the government of the day follow through in its larger policymaking role in granting equality rights to disabled people. Let me mention a couple of examples. On the issue of transportation for disabled people, during the last

election the Premier (Mr Peterson) committed his government to releasing a report in September 1987—in other words, immediately following the election—addressing the concerns that had been raised by the disabled community about the direction in which transportation for disabled people was going. That report still has not been released by the government. In my submission there is one reason only for that, and that is because the Ministry of Transportation does not want to give disabled people equality rights in transportation.

Second is the issue of absenteeism. Representations have been made for over a year to the Ministry of Labour to protect the job rights of people who are absent from work because they are sick or have a disability. The new Minister of Labour (Mr Phillips) has released a package describing proposed amendments to the Employment Standards Act. Included in that very important package is provision that would protect an employee who is home caring for a sick child, a sick parent or a sick spouse. However, in this province, as incredible as it may seem, there is no protection at all under the Employment Standards Act for an employee who is home sick himself or herself. It is just incredible.

This is the largest basis of complaint by disabled people to the commission. I can understand the commission does not want to deal with these cases on a case-by-case basis. It seems to me perfectly logical to ask that bottom-line protection be established under the Employment Standards Act to protect a person who, because of sickness or disability, is absent from work for a short period of time. There is no protection at all in this province for someone in those circumstances.

The third area is education. Disabled people have been calling for many years for permission to integrate themselves into regular classrooms in order to receive an appropriate education. As a group, disabled people are woefully undereducated; this is, in part, why disabled people are suffering such incredibly high rates of unemployment and dependence upon social assistance. Cannot the province come through with the education legislation that has been promised for at least two years, since the white paper was released back in 1986 dealing with this issue of integration?

New Brunswick, Newfoundland and even the Northwest Territories, for heaven's sake, have been able to come through with this kind of legislation, and yet in Ontario we have not been

able to act. This would remove a tremendous burden and a major source of complaints to the commission, if this issue were addressed in education legislation.

Finally, what happened to the commitment made in the accord during the period of minority government to introduce employment equity legislation? Why is it that disabled people have to make complaints against employers or confront in an adversarial way employers for whom they want to work under the human rights process? Why are we not introducing legislation which will systemically address this issue of the barriers faced by disabled people who are seeking to work? Is it not time that the government did something, not only for the commission, but disabled people, visible minorities, women and native peoples, by coming through with some employment equity legislation which addresses their needs?

My final point is that when the amendments to the Ontario Human Rights Code were passed unanimously in December 1986, we had high expectations. There was a one-and-a-half-year delay in proclaiming those amendments as they related to disabled people. Other sections of the code were proclaimed immediately, but the reason we were given was, "The government is developing regulations to interpret what is meant by 'accommodation' and what is meant by 'undue hardship to respondents.'" This was the reason given for not proclaiming, "The government is going to develop regulations." Later we learned that the Ministry of Transportation and the Ministry of Housing blocked the regulations within cabinet and those regulations never came forward and the sections of the code were proclaimed without regulations.

We waited another year to year and a half and the commission, to its credit, developed guidelines on this issue. Now employers are saying they are preparing a major challenge to the guidelines which have been developed by the commission.

Is it not possible for the government to take the guidelines developed by the commission and pass them, as it has the authority to do under the Human Rights Code, and make them regulations so that the commission can get about the business of enforcing those guidelines and making accommodation a reality for disabled people, as was intended when those sections were passed back in 1986? Why does the commission have to fight a rearguard action, all the way to the Supreme Court of Canada and back, in defence of its guidelines when the government could make it

happen as simply as making those guidelines regulations?

My concluding comment is this: We have got a Cadillac of a Human Rights Code in this province; it is something we can all be very proud of; it says what needs to be said; but is the government serious about human rights when that Cadillac of a Human Rights Code is given to a commission which does not have the resources to make it happen and is not, through its own action and its own legislation and its own political agenda, reflecting the principle of equality rights for disabled people? The issue for me then is, who is going to stand up for the human rights of disabled people?

I call upon the government to start to do that once again. I should say to the government's credit that we certainly saw a lot of action in this respect during the period of minority government and I think all parties deserve credit for that progressive period for disabled people. Thank you.

The Vice-Chair: Thank you, Mr Baker.

Mr Wiseman: I will be short. I would like to say that I agree with the problems you have with trying to get your clients in and getting a fair assessment of whether or not they qualify when you get to the Human Rights Commission. Both my constituency officers are having a heck of a time and they are bogged down; they just feel that they are not being listened to.

You talk about the resources in the human rights. I do not think they need to have that many resources that when they promise a call back, they will call back, and call back within the time frame they say or very shortly after.

I have even found that when I call somebody in Toronto. When I get frustrated that my officers are getting no response and my constituents are saying, "Wiseman, are you doing anything about this?" and you know in your heart and soul that you have and nothing is happening, you phone somebody at a higher level in Toronto and he tells you that he will phone you back with the information. He is not familiar with the case file and you never get a phone call back.

That is not once and a while. I have never had a phone call returned by these people who are supposed to be looking out for this. It is just like a member: If the member is not willing to help his people and does not return the calls, no matter how much staff you have, you are not going to get the results that I think we all want.

People out there expect the Human Rights Code to protect them and the human rights people to have a heart and go to bat for them, but this is

not happening. I have worked through the legal aid clinic in Renfrew, which does very much like you do yourself, and he has told me he is frustrated too, he and his partner.

1030

I have just come in as a substitute this morning, but I was really pleased that this came up, because I have talked with the former minister. I do not know whether it fell on deaf ears or what, but I never did hear anything. Perhaps this new minister, and when you have a new chairman of the human rights commission, and perhaps being here this morning and hearing this they will jog somebody's memory in Ottawa, or the regions we all serve; mine is Ottawa region. I am sure that Miss Roberts has probably had the same problem. Maybe she has not, but she will say if she has. Maybe we can get something done about it, because people have the idea that the Human Rights Code in this province is sticking up for them and will go to bat for them.

In my opinion, any time I have had to deal with them, I have been really discouraged. That is not the way I run my office. If people phone in, they get an answer. It may not be the answer they want, but at least they get a call back and the courtesy of a call. I have not had that, so I am glad you came this morning and glad I was here to hear your presentation.

Mr Baker: I think the problems are pretty clear; what is necessary are some solutions. I think that people are entitled to solutions to those problems and I hope you are able, as a committee, to come up with some constructive solutions. I have tried to make some suggestions.

Mr Philip: You made a recommendation of an external audit to deal with where the problems are, the systemic problems, as you call them. I gather by systemic problems you are concerned chiefly with the length of time in dealing with matters and the enforcement provision.

I guess I am inclined to be attracted by your proposal, because I do not believe that simply throwing more staff in an agency necessarily solves problems. It may be a solution in some instances, but I think that you do not just throw in more money and more staff and necessarily get more results. Therefore, an audit is necessary.

I guess I am somewhat sceptical of the value for money of some of the external audits we have seen by certain management corporations. I am not talking about the one that was done on this particular matter that we are dealing with, which I thought was a useful document, but there are two intergovernment agencies that I think have

performed fairly valuable external audits on various agencies. One is the Provincial Auditor, who has done an excellent external audit on mental health services in the community, for example. The other is the Ombudsman, who has done some systemic studies on such things as the Workers' Compensation Board.

I am wondering if you have any particular preference as to whether an external audit would take the form of getting Coopers and Lybrand or one of those companies, of requesting the Provincial Auditor to examine the efficiency and value for money of the operations or of going the route of the Ombudsman, who has some experience in doing systemic analysis of such things as the Workers' Compensation Board and various other types of rehabilitation sorts of programs.

Mr Baker: I think the sad and ironic thing about the criticism the commission has been subjected to recently is that the criticism has come largely from groups seeking equality, yet the victims of what has happened to the commission have been precisely those groups.

I make that comment because, from my standpoint, an appropriate mechanism for such an external audit would be to have the commission, as an honest broker, pull together representatives of the groups who will bring their complaints to the commission in good faith and consult with them in the hiring of an external consultant. I have seen this process work very well in the conduct of the evaluation of the psychiatric patient advocate office and in other areas where the groups affected have some say in who bids or who tenders for the conduct of that kind of investigation. It means that the actual report has credibility in the eyes of the constituency whose needs it is intended to address.

I guess that would be my suggestion, that the disabled community, women's groups, visible minority groups and native groups be invited to a meeting to make suggestions as to the form in which the audit might be conducted, and when tenders are submitted, who should be given the contract, with the commitment that the audit would be released to MPPs and to everybody and decisions made about whether the problem is management, resources or—as in many cases it is, I think—lack of insight or knowledge into how to respond to a person with a developmental handicap who is coming to the commission without the benefit of a lawyer or advocate and expects the commission to be able to respond adequately to his or her particular needs.

Unfortunately, that is not the case. A deaf person, a person who because of blindness requires communication in alternative media, the inaccessibility of commission offices to people in wheelchairs; these also I include when I talk about accessibility. People in jails or psychiatric facilities who have difficulty in communicating privately with the commission because staff is looking over their shoulder and no confidential mechanism has been established for communication with the human rights office: These are the kinds of issues that I think need to be addressed. There are not necessarily dollars attached to improving these kinds of things. In many cases, it is a matter of sensitivity, training, thoughtfulness, planning or whatever it is. From my community's point of view, those are issues. I am sure the other communities you will be hearing from have their own issues.

Mr Philip: Until such time as that audit would take place, and we are talking about probably a year or two down the line before you could have an implementation, we do have a commitment, at least by Gerry Phillips, I think. Hopefully, it will be carried through with the same dedication by his successor in that office, and certainly will be by the new chair. She is concerned about the delays and the kind of thing that the Prashad case typified.

Pending any kind of eventual overall changes, I am wondering whether there is a specific recommendation that you can make from your experience that would help the present administration, at least in taking immediate corrective action. One suggestion has been made, for example, that there should be a time limit for respondents and that failing to respond would be taken as an admission of fault. That could be built into the act. There are other ways the Ombudsman has built in in terms of time frames a respondent has to reply to an inquiry.

Are there specific recommendations you could make? After all, you do have the new chair sitting right behind you taking notes and listening to what you are saying. Do you have specific recommendations that would help resolve some of the problems in the backlog right now?

Mr Baker: First of all, let me say that our organization has the greatest respect for the new chair. It is a wonderful appointment and I certainly wish her well, as do all members of the disabled community.

But to take up your point, I think the most immediate and pressing concern is, who is the new executive director going to be? I sure hope that position is upgraded so that a high-quality

person is put in there. That is an unbelievably difficult position that person is going to be going into. There are tremendous needs that need to be addressed. If there is one job in government that I would say will require a very talented person, that is the job. If there is anything this committee can do to ensure that the commission is given the resources needed to attract the right person from within or without government, I would say that would be the most pressing and immediate point.

Your point about time limits is well taken, I think. There are a number of complex implications in terms of procedures. My understanding is that the commission is endeavouring to address this. Their problem is that if they slapped on a period, you know, where you must respond within three weeks or you go to jail, it is a laughing matter because of the commission's backlog. They do not get back to you for three weeks. It takes them three weeks to get a letter typed now. How can you keep a straight face and tell a respondent to treat you seriously when the respondent can turn around and say, "Your letter was dictated three weeks ago and I just received it yesterday." That is the practical reality of what happens.

I would like to be able to say there are those kinds of—we should be in a position where we can do that, but realistically we are not, because you cannot seriously ask people to meet certain deadlines unless the commission is in a position to meet them too. I am afraid it is a longer-term proposition and we need to get into these problems for the long haul and I feel it requires the commitment of all members of the Legislature to the goal of making the human rights commission an effective enforcement mechanism for human rights.

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Mr Philip: One last question, since you are a lawyer practising in the human rights field. It has been suggested by some witnesses before this committee, or certainly implied, if not directly stated, that certain respondents, possibly on legal advice, use delaying tactics as a way of simply having the person eventually drop the charge. Obviously, if you are waiting five years to get back to your job, the chances are that you are going to find another job and say the heck with it after two years, let alone five years. Is there a way, notwithstanding the problems, the internal bureaucratic problems of the commission, of dealing with delay on the part of the respondents as a way of avoiding any kind of action taken against them?

Mr Baker: Absolutely. If I was a lawyer for a respondent, the first thing, my number one tactic, would be delay. I have a number of clients who have given up in frustration. I got fired by a client the day before yesterday. He just says, "I can't take the stress of it any more. It's been years; I cannot take it. Get lost." I do not feel personally responsible for his attitude. I did not get fired because I am a bad lawyer; I got fired because the commission is not responding to that person's needs.

So if I were a respondent's lawyer, that is exactly what I would do. I would delay the commission. Everybody gets tired of the case, it is the same old stale facts and no one cares any more, including the complainant, and the complainant just says, "I've got no human rights." I will take you back to my meeting with this DAWN group. They are saying, "We complained, but it doesn't mean anything, so that's it."

I think there are a number of things that could be done. There could be a permanent sitting panel hearing human rights cases, for example. There are not enough cases going to boards of inquiry and the winnowing process becomes that much more pressured because they have to get the numbers down to such a small package. There are all the delays and this has consequences for staffing at the commission. If you can have a hearing scheduled over the course of six to eight months a year where you have to find the bookings that are satisfactory to the lawyers, the law professor or whoever is sitting on the board of inquiry and so on, that has consequences for human rights commission staffing.

There are a number of things which could be done. I have not brought here today sort of a comprehensive suggestion. I think the commission is capable of responding to much of it. I think there are things that require a legislative change. I would like to see legislative rules about how long the commission has to determine whether or not a matter should go to a board of inquiry. I think there should be a set period, perhaps six months. I would like to see us in that position, but the commission has to clean up its act first.

The Vice-Chair: I should explain to the committee that I am allowing this to continue past the time because our next deputation has not arrived.

Mr J. B. Nixon: There are a couple of areas I would like to explore with you. I would first of all say it is a good brief and well presented.

My first question has to do with the area of the audit that you are proposing. I am going to suggest something to you just to get your comments.

Certainly within this committee we have heard that the backlog is one of the most serious problems the commission faces and that it is not a new problem in any sense, the backlog has been there for a long time. I do not think anyone is disputing that the backlog is a problem. Certainly I am not and I do not think any member of the opposition is and I do not think any member from the government's side is. So we have identified the problem. I try to be common sense about this. I would say, "Let's get on and solve it."

Why audit it? We know it exists. Should we not be looking for solutions, whether it is more resources or streamlining the process for handling complaints, probably those two things and many more? Do you have any comments?

Mr Baker: Yes. I guess my number one comment is that is not the only problem. If it were the only problem, then the commission would be free—and I must say that I have heard many suggestions that this is going on. People call up and describe what has happened to them and they get a very peremptory response over the phone, such as: "That doesn't sound like discrimination to us. Get lost." They call us and say, "This is what we were told," and we say: "That's the clearest case of discrimination we've ever heard of in our life. How could they possibly tell you that?"

If your single and only priority is getting your backlog shortened, then a whole lot of pretty serious things can happen. I think that to a certain extent the commission has been responding to: "The backlog is our only problem. As long as we get our numbers in order, nothing else matters." In that kind of environment, the kinds of issues that I would hope the audit would address become exacerbated as problems because their sensitivity to the needs of the complainant becomes less of an issue. In fact, if you never become a complainant, if you were never born, that would be better because, "The priority is getting our numbers in order."

Mr J. B. Nixon: I had misunderstood you.

Mr Baker: I understand everybody's frustration, and I do agree with you that the backlog probably is issue one, but I would not want to see it become the only issue.

Mr J. B. Nixon: On the other hand, you are suggesting that the apparent lack of sensitivity that you or some of your clients may have experienced is probably attributable to a need to

deal with numbers and with the backlog, and probably just the general frustration that may exist within the commission. If the situation is that they are facing a backlog, probably everyone feels a little overwhelmed.

Mr Baker: That is right. I am sure the morale within the commission is extremely low, and recent events have not helped any. I think there is a tremendous chief commissioner there, and I hope within this province there is a will to make the commission work. Once people start to feel that and see the commitment coming from the government to the commission, giving it what is needed to make it work, I am sure that can be turned around.

Mr J. B. Nixon: Okay. The second area—and I realize that this does not have to do with the mandate of the committee, so I hope people will indulge me. Mr Baker touched upon it: the area of sick leave. I was not even aware that this was an issue other than the recent announcements of the minister, to be honest with you. What exactly are you proposing?

Mr Baker: The proposal is that in the Employment Standards Act there be specified entitlement to being absent from work due to sickness or disability, without losing your right to your job. We are not asking for compensation; we are not asking for paid sick leave. There is a lot of evidence that suggests that for disabled people, once they cut that tie, once they lose their connection with their job, once they are unemployed, people in that group do not find another job. They are the people you will find on welfare, and it is most unfortunate, because they are productive within those jobs.

Our position would be that it is possible for employers to do more to accommodate people who are temporarily absent from work due to sickness or disability by hiring a replacement. Take the salary, if you need to, that you would have been paying the people while they are away sick, but it is terribly important that they have that job to go back to.

There are sickness benefits under the unemployment insurance scheme; 15 weeks is your entitlement. You can keep body and soul together. It is not a financial liability that we are seeking to impose upon employers. What we are saying is that employers should be prepared to accommodate a person who is absent from work due to sickness and disability, for the same reasons that we are saying it for mothers who need maternity leave, parents who require parental leave and people who are caring for dependents at home who are sick.

Mr J. B. Nixon: So essentially you are saying, take the common law right and enshrine it in statute.

Mr Baker: That is right. The common law right, though, is enforceable. Senior managers have the common law right because they have the money to go to the courts to enforce it. People who are fortunate enough to be represented by a union have protections against being fired in this area because they can go to arbitration. But disabled people, who unfortunately tend to be in lower-paying jobs, often part-time jobs, marginal jobs within the economy and are not fortunate in being senior managers or represented by unions often, have no rights and no protection in this area. You are absent for a day or two and, bang, you are gone. Someone else comes in. "We do not need you."

Mr J. B. Nixon: The final area I wanted to explore with you was your comment that we should be upgrading the position of executive director. That, to me, is something we have not heard before. When you say "upgrade," perhaps because I have been around this place for a couple of years now, my immediate thought is, do you mean move the executive director into ADM, which is assistant deputy minister status and which means, essentially, a bigger office, a little more pay and things like that? Is that what you are getting at?

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Mr Baker: That is exactly what I am getting at. Apparently, that is a big issue for some highly talented people in the government. They are not willing to consider coming on and taking this job, despite their personal commitment to the area of human rights, because it would require taking a cut in pay.

To my mind, I know a lot of ADMs who are not doing anything like the kind of job that the executive director at the Ontario Human Rights Commission would have to do in terms of dealing with people and policy, planning, the political sensitivity of that position and, on the respondents' side, the highest-paid lawyers that are out there today. The responsibilities that fall upon that person are tremendously onerous and I do not think it has ever been recognized by this or the previous government in terms of what gets paid to that person.

Mr Velshi: I have a very quick question here. I enjoyed your presentation and am sorry that I did not get it in writing to understand more of it. You made some good arguments but also some of what I consider to be very frivolous assumptions.

You mentioned that just from looking at the telephone operator, you decided that everybody at the Ontario Human Rights Commission is overworked, just from sitting for half an hour and looking at somebody for that one period. You also seem to have a direct pipeline into cabinet, because you seem to know who said what there.

I am not too sure I am even going to discuss that with you, but I would like to ask you something on employment equity. Which other jurisdictions are there in Canada that have introduced employment equity, and how successful have they been?

Mr Baker: Canada is the worst country in the world in terms of legislative protection of jobs for disabled people. The United States is far ahead of us. Virtually every country in Europe, Japan and even Nigeria has quota schemes or mandatory employment equity schemes.

Canada is unique in the industrialized world in our absence of legislation in this area. I cannot point to other Canadian jurisdictions, because other Canadian jurisdictions are just as bad as this province. This province has the best human rights legislation in the country and I think that creates expectations among disabled people that systemic barriers in employment are going to be removed.

The problem is that dealing with those kinds of cases through individual complaints is tremendously expensive. The consequences for the individual employee essentially are that he is pitted in an adversarial role against his employer. I think that the evidence over the long term will be that it is not going to work in the absence of good employment equity legislation. Go to Germany, France, England or anywhere in Europe and you will find that there are very strong pieces of legislation. France, Germany and Italy have just toughened theirs, guaranteeing employment for disabled people. You are right in that there is something called an Employment Equity Act federally and it is toothless; there is no enforcement mechanism. I cannot point to a Canadian jurisdiction.

Mr Velshi: The Ontario Civil Service Commission has a program in place. Are you aware of that?

Mr Baker: I understand that there is to be an announcement on Friday about a program. I think the Ontario Civil Service Commission up until now has been kind of talking about things, really, more than having a plan in place. Perhaps you know details of what is to be announced on Friday. My point is that, frankly, the big problems are in the private sector, and to this

point in time, I do not feel the government has shown a sincere will to move in that area, for whatever reason.

Mr Velshi: Okay. There is just one other, final comment I would like to make, rather than asking a question. You mentioned that while there was a minority government the Ontario Human Rights Commission worked very well, and yet you complimented Raj Anand on what he did for people with disabilities. I think that you were complimentary towards Raj Anand, but he only came in with a majority government.

Mr Baker: I was not complimenting the commission during the period of minority government at all. To my way of seeing things, Raj Anand inherited a commission with terrible problems. The fact was that people had very low expectations of the commission. Mr Anand came in with very ambitious plans to change things, and the rest, as they say, is history.

I was saying that the period of minority government was a very principled period when legislation brought forward by the government reflected respect for equality rights of disabled people. It did not seem to be based on, you know, whether people could get 1,000 people in wheelchairs to march on Queen's Park. It had a lot more to do with a kind of vision of the way in which the province could improve access for disabled people. Then immediately after the election we seemed to slip into a period when all of that was forgotten and the agenda became very short and we lost that sense of what was possible for disabled people.

We hope that it is possible for the government to get back on track and move some of the issues that I have mentioned—and there are many, many others—forward and reflect some respect for equality rights for disabled people in government planning and not leave it all to the commission and say, "Commission, that is your job," and hide behind the commission. We know the commission cannot do anything for years and years, because it is in a terrible quagmire.

Mr Velshi: Okay, that is interesting. Thank you.

Mr Philip: You mentioned that Mr Anand had a number of ambitious plans for the commission that he had started to implement but history dealt him and the commission a blow. Do you think it would be valuable for this committee that is looking at the human rights commission to call Mr Anand before it as a witness to find out exactly what he had in mind, what he had implemented and what his proposals were?

Mr Baker: I think in the new chief commissioner there is someone who is committed to carrying forward the vision that Mr Anand had, and I understand that you had a very thorough presentation from her last week. I have not had the opportunity to review what was said, but I think my view would be that Mr Anand has had a rough go. I know, because he is a personal friend, that he is making efforts to put his life together and I do not see that there is anything very much to be gained by subjecting him to that when the government has seen fit to appoint someone who shared his vision, worked with him as a partner on the commission during his tenure as chief commissioner and has now taken over the reins and, I am sure, will do an excellent job.

The Vice-Chair: Thank you, Mr Baker, for your presentation and your time here this morning.

Mr Baker: Thank you.

The Vice-Chair: The next deputation is the Ontario Council of Sikhs. Welcome and please come forward. Manohar Singh Bal, welcome. Perhaps you could introduce to the committee the other gentleman who is with you.

Mr Singh Bal: Yes, this is Jasbu Singh. He is an active member in the council and works with us on all the different issues.

The Vice-Chair: Thank you. We have copies of your brief and you have one-half hour to use as you choose. If you wish to leave time towards the end of your presentation for questions, that is up to you.

ONTARIO COUNCIL OF SIKHS

Mr Singh Bal: Good morning to everybody. The Ontario Council of Sikhs welcomes the opportunity to appear before this committee to discuss issues relating to the human rights commission.

The Ontario Council of Sikhs is a representative umbrella body of the Sikhs of Ontario, representing 80,000 Canadians of the Sikh faith. This apolitical council was founded in 1987 and is governed by up to 31 representatives of Sikh gurdwaras—that is, temples—Sikh organizations and individuals. We have made a number of representations to government and its agencies on such matters as religious education in the public schools, human rights, minority rights, discrimination, religious rights and generally on many provincial issues.

Our aims and objectives are as follows: to promote, preserve and maintain Sikh religion, Sikh identity, Sikh culture and Sikh heritage; to

facilitate the integration of Ontario residents of Sikh descent into the Canadian society and to foster the retention and development of their cultural heritage within the framework of multiculturalism and promote goodwill and mutual co-operation between Canadians of all creeds; to act as a medium of communication between the Sikh community in Ontario and government on matters relating to the Sikhs; to provide and facilitate access to social and community services.

It is in pursuit of these aims and objectives that we the council submit the following to you.

Our community: Although Sikhs arrived in Canada at the turn of the century, they are one of the least understood communities. So, briefly, Sikhism, the seventh-largest and the youngest religion of the world, arose from the teachings of Guru Nanak Dev. The word "guru" means teacher. He was followed by nine successors. The last guru, Guru Gobind Singh, decreed: "Henceforth, the religious book of the Sikhs will be the Guru. There will be no other living guru after me. All spiritual lead should be taken from the teachings of Guru Granth Sahib, that is, the holy book of the Sikhs. All political guidance shall come from the Panth, that is, the Sikhs as a corporate body.

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The fundamental beliefs of Sikhism are there is only one God; all human beings are equal; Sikhs do not worship idols, tombs or graves; there is no fasting in Sikhism; in Sikhism body mortification is forbidden; Sikhs should not drink, smoke or consume any drugs or intoxicants; Sikhs practise equality of man and woman; there is no caste system in Sikhism.

Guru Gobind Singh, the 10th prophet, introduced the tradition of baptism. Baptism is taken by Sikhs in a ceremony which is performed in the presence of the Guru Granth Sahib, the Sikh holy book. After a person is baptized, he or she is required to follow the Sikh code of conduct. The Sikh code of conduct clearly states that a baptized Sikh must always wear the five Ks all the time. The five Ks are kes, kirpan, kachhara, kangha and kara.

The overall importance of the emblems is very clearly stated by the 10th prophet, Guru Gobind Singh, as follows:

"Know these five Ks to be the emblems of Sikhism,

Under no condition can one be exempt from these,

Kirpan and bracelet, drawers and comb—these four,

Without hair, the fifth, all these emblems are meaningless."

Hence, Sikh emblems are a fundamental of Sikh religion and cannot be separated.

Our community and the Ontario Human Rights Commission: Our community is being discriminated against because of our religious beliefs; that is to say, because we wear the five Ks. From 1977 to 1987, three separate cases were filed by Sikhs with the commission. These cases involved one or another Sikh emblem. All the three were decided in favour of the Sikhs and the permission to wear any or all Ks was granted.

However, the decision on the fourth case involving one of the Ks, the kirpan, is still pending. This complaint was initiated by the commission against the Peel Board of Education in December 1988 because, under the present discipline policy of the Peel Board of Education, a kirpan, one of the essentials of the Sikh faith, is defined as "weapon," which in the opinion of the commission infringes the rights of the students of the Sikh faith to equal treatment in the Peel board system.

We do not know when this case will be settled, but under the present system there is no time restriction on the respondent to respond back to the commission at the various levels of inquiry. If there is no conciliation between the parties and the complaint goes to the board of inquiry, there is no time restriction on the Minister of Citizenship to appoint the commissioner of the inquiry and no time restriction on the board of inquiry to hold meetings. Lawyers can drag this on forever. In this atmosphere of uncertainty, how can we expect quick decisions?

The commission does not have power to control the process. It is the job of the politicians and government to strengthen the code. Do the politicians and government have the political will to change the system? Do the politicians and government have the political will to change the code for the benefit of those who are being discriminated against? Do the politicians and government have the political will to enforce the code?

Over the period of the last many months, we have heard enough criticism of the commission. Let us not dwell in the past. Let us rather learn from the past. Let us look to the future, and let me remind the politicians and government and the officials of the commission that actions will speak louder than words.

We recommend that a time frame be introduced at each and every level of the process; a permanent board of inquiry be appointed to

minimize delays; there should be ongoing training for the staff of the commission and for the investigating officers, and there should be ongoing consultation between the community groups and the commission.

Backlog: We are of the opinion that if nothing is done about the backlog, it will become larger and larger. A recent report prepared for the Ministry of Citizenship showed a backlog of over 1,400 cases at the end of March 1989. Under the present system, with the given resources, the commission can hardly cope with current workload.

We recommend that this committee, with the help of the officials of the commission, work out a plan to clear the backlog. No doubt additional moneys will be required. This committee should recommend to the government that additional funds be made available to the commission to clear the backlog.

Once the backlog is finished, we recommend that the commission, in its annual report, should provide data as to how many cases are in backlog and provide details of its efforts to seek additional moneys from the government for settling these cases. The commission can ask for help in lobbying the government from committees such as yours and other community groups.

Time management at the commission: All the three cases I mentioned earlier involve the five Ks. The issue in all the three cases was the same. The commission investigated and a board of inquiry heard the same arguments three times. The basic question of religious freedom was the same. The same expert witness appeared at two out of three inquiries. The same principles of Sikhism were studied over and over again, and yet the commission is going to follow the same process a fourth time with respect to the complaint against the Peel Board of Education.

Why does the commission have to waste its time studying the same issue four times? And then we complain about delays and backlogs.

We recommend that the commission be given power to make quick rulings on matters which have been decided previously.

The issue of the kirpan has already been decided by the commission in one of the three cases, yet when the Peel Board of Education passed such a discriminatory policy, the commission was helpless, the government was helpless. Two students were thrown out of schools and nobody was able to help them. They have been deprived of education since the beginning of this year. Two teachers have been fired from their jobs and society is helpless.

We as a society invested time, energy and money in investigating three different cases but failed to draw any long-lasting lessons or conclusions from them.

We recommend that the commission be given power that if the same type of discrimination happens time and again, it can recommend to the government certain mandatory legislative changes.

Employment equity at the commission: The need is to introduce employment equity, in both private and public sectors. This time it happens to be the key positions at the commission; next time it could be somewhere else. We are of the opinion that visible minorities are facing discrimination at all levels both in private and public sectors. How many visible minorities do we see at key positions?

Here again, the government has to take a lead. The government of Ontario is one of the largest employers in Ontario. Let us start from here. Let the government introduce employment equity at all levels. Let the members of this committee and their respective political parties introduce employment equity in their offices. Let the Premier, the ministers and the members of the Legislative Assembly be the role model for others.

We believe that government will live up to its commitment and provide a strong mandate to the commission so that the commission can investigate, report, monitor, enforce and protect the rights of an individual. Also, let the commission be given power to recommend mandatory recommendations to the government.

Mr Philip: As always, you present an interesting, well-thought-out, intelligent brief and I appreciate that.

On the issue of the five Ks, I guess rather than deal with it from the human rights commission having the power to, if you want, make a benchmark case and then automatically stamp others as the same, my disposition would be more to legislate the right of the five Ks and that the onus would be on an employer to prove that there is some physical danger to other employees that would justify him stopping the wearing of any one of the five Ks. I would think, perhaps in the case of a firefighter, that might be one of the areas where they might try to make that case.

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I guess my concern is that the courts have not been very fair or—let me put it another way; I do not want to be in contempt of the Supreme Court—have not been all that receptive to what I think have been very powerful arguments made by the Sikh community and maybe legislation is

needed to protect the five Ks rather than going the route which you are suggesting.

Mr Bal: I think you are right in what you have said. We have tried in the past, that instead of having case-by-case decisions by the Ontario Human Rights Commission or going to the courts for the same issue over and over again, the need is to legislate the changes. There are different ministries which will be involved. For example, in the case of the schools it will be the Ministry of Education and in the case of the workplace it will be the Ministry of Labour, so that different ministries and different departments are involved.

We have been pursuing with the government, from last year or so, that legislative change is what is required to settle this issue once and for all. Based on these decisions which I just mentioned, and also based on another Canadian human rights decision, in the case of Bhinder vs CN Rail, there is enough background material, in the sense of logic, that the government can take this step and say: "Okay. We don't have to go to the commission again and again. The community doesn't have to spend the money and its resources over and over again on the same issue. Let's recognize the five Ks and let's do the necessary changes and amendments to the appropriate laws." That, I hope, will come some day in the near future.

Mr Philip: It was the CN case that prompted my comment, I guess. I think that legislation is needed or otherwise you are going to end up having unfortunate rulings in the courts, be it under the Canadian Human Rights Act or under the provincial Human Rights Code.

My question to you is this: If I were a Sikh in Great Britain, for example, would I have more rights to my wearing of the five Ks than in Canada?

Mr Bal: Yes.

Mr Philip: Can you explain? Are there other jurisdictions which have successfully dealt with this issue? We seem to be so far behind in dealing with this problem.

Mr Bal: Let's start from Punjab, where most of the Sikhs live. There is complete freedom to wear all the five Ks at their jobs, wherever that might be.

Coming to other countries, countries like Singapore, Malaysia and other countries in that subcontinent, there is complete freedom to the Sikhs to wear the five Ks. Children wear the five Ks and go to school. There is absolutely no problem.

In England, way back in 1971, the highway traffic legislation was amended to exempt Sikhs from wearing a helmet when they are driving a motorcycle. I am really not 100 per cent sure, but I presume that there are a lot of baptized Sikhs in Great Britain and their children are also baptized. We have not heard of any complaint out from there that they have been disallowed from going to school or to their classes.

Another area in which Great Britain is ahead of us is that there is legislation right now in front of Parliament which will exempt Sikhs from wearing a helmet at the job site. It is the same in the United States. There are a couple of areas in which there have been changes; for example, in the workplace.

In Canada, the most famous case was that of Bhinder, in which the Canadian Human Rights Commission recommended the changes to Parliament, but Parliament has not acted yet. On a provincial level, Manitoba is one province where there have been amendments to its highway traffic legislation and Sikhs can ride motorcycles there without helmets. Many school boards throughout the country, from coast to coast, and even the neighbouring board of the Peel Board of Education, which is the Etobicoke Board of Education, all these boards allow the Sikh students to wear all the five Ks in their classes.

So the need is to sort of centralize all this information, and the government has to take that step to initiate policy development or legislative changes at the provincial level so that its implementation is even throughout the province. One board allows it, the second board does not and a third board does. We cannot go to all those 25 boards throughout the province and lobby for changes. In that respect I think we are a little bit behind, on a province and country basis, that there is need to have these changes legislated, which we have not done yet.

Mr Philip: Just by way of editorial comment, it always strikes me as blatantly absurd that we could welcome members of the Sikh community into our armed services and constantly compliment them on the job it did during the Second World War fighting fascism and nazism – and no one suggested that members of the Sikh community were not welcome unless they wore a helmet when the Nazis were shooting at them – yet those same people may try to deprive you of wearing your five Ks to work. It just strikes me as a blatant absurdity that when you are needed to protect democracy you are welcome, as long as you do not go to work with the same gear that you went to war with. I just think it is a real

discrimination and that is why I have introduced my private members' bills, as you know, and hopefully the government may introduce similar government legislation.

Mr Velshi: Mr Bal, thank you very much. I appreciate your presentation and I have heard this before. I must say not only that you are the most misunderstood group in this country, but I think you are also the most abused. Sometimes I question whether you are the most abused or whether the francophones are, in this country, but I think you are sort of almost at the same level.

Mr Philip raised the question of the Sikhs' defending of the British Empire.

Mr Philip: Commonwealth.

Mr Velshi: Commonwealth or empire; it is the same thing.

Mr J. B. Nixon: It depends.

Mr Velshi: I think the Sikhs and the Patans are the two peoples whose bravery is legendary. When everybody was running in the opposite direction, running away, these two groups were running towards. I think they paid the price for the justice they are asking for and demanding in this country, and yet we deny them that. I think the Peel Board of Education perhaps shows the most blatant intolerance, if not racism, in its attitude towards the five Ks.

I have advised the Sikh community when I have spoken to it before, when it was asked to compromise on some of the five Ks and religious icons. I myself have suggested to them that there should be no compromise on religion under any circumstances. I think this is a very important point to remember.

While the chief commissioner of the human rights commission is sitting here with us, I think it is important also that these matters not be taken on a case-by-case basis. It is not just a violation of human rights here; it is trampling upon one's religious beliefs. It is very important that we do settle these problems once and for all. There can be no compromise on it and I appreciate this.

I wish to make one comment, Mr Bal. Extra funding of \$3 million has been given to the Ontario Human Rights Commission, of which \$1 million is reserved for the systemic side of investigation. When the chief commissioner came to us, she did mention that advertisements have been put in the paper for additional staff. If I am correct, it is 17 members. Maybe you should be looking into that and if there are Sikhs qualified in this particular field, then you could ask them to apply for these positions. I hope the

competition is still open for that, but I am not too sure if I am right there.

I do appreciate what you are saying. I am just repeating what I know for other members and also for the benefit of people sitting here. What you are saying is, "Is there a fundamental right that you are talking about?" We see so much intolerance. We see so much intolerance: those two sisters in Manitoba and Alberta who have raised 30,000 signatures so that the Sikh RCMP cannot wear the turban. I think it is just ludicrous that in this day and age we have people thinking like that. Sikh soldiers, Sikh policemen—I have seen them in East Africa—are some of the finest we have had and nobody has asked them to compromise on their religious beliefs. So the fight is there; we are with you on that.

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Mr Bal: If I can just respond to one of two statements, it is not, as you said, that we do not want to compromise. I do not mean compromise. I wear a turban or I do not wear the turban; there is nothing in between. Either I have the beard or I do not have the beard; the only difference could be that I tie it up either one way or the other way. That is the only option I have, to think of the ways to tie it up. As for the fundamentals of the religion, there are a few things on which we cannot compromise because they are the fundamentals of the religion. If they go, the religion goes.

With reference to the funding point you raised, I am aware of the additional moneys which have been provided to the commission by the government, but my point in here is that just as with the backlog of refugees that is being dealt with by the federal government, so should this be a separate thing dealt with by the commission, with different resources and separate resources, so that once and for all we get rid of the backlog and start fresh. If we are always in a backlog, we will never be able to catch up with the current situation.

Mrs E. J. Smith: I wanted to say I join the comments on the excellent presentation and particularly the fact that you used everyday language. I love to see that, that you spoke directly to the point and made your points. That was very welcome. I want to speak everyday language back and be like a devil's advocate in this matter and say that I think any misunderstanding that arises over wearing a turban has to be viewed as that: a straight case of people not understanding where this comes from. It is obvious that rules on headgear for motorcyclists are put there for their protection. If you choose to

go in a turban, it is yourself you put at risk and not the public. So there is an educational role there and a prejudice role that we should all address ourselves to. But let me come to the carrying of the—"dagger" is the wrong word; please help me—

The Vice-Chair: Kirpan.

Mrs E. J. Smith: —kirpan in the school, I think here you are addressing instead the basic insecurity of parents who hear lots of stories of violence in high schools, who, even if they are not particularly prejudiced or do not recognize they are prejudiced, still feel that no kids should be allowed to carry weapons into school because they want their kids to be safe. So their fear does not necessarily have to come from a prejudice; it comes from a fear of violence among teenagers in the schools.

Mr Philip: But they are not asking for a banning of scissors and letter openers.

Mrs E. J. Smith: I think if they carried them on the belt, they would be. I do not want to get in a debate with you on this. I want to try to speak as a parent to the gentleman here.

I think in unprejudiced people there could be this natural fear. Add to it the natural fear that teenagers often are not totally in the control of their parents or of the religion to which they were born. Sometimes, needless to say, teenagers go through a stage of rebellion that comes out in unpleasant ways in the school system. This might be shared by some of the teachers. I am wondering how you would answer this and how you would also be able to guarantee or police your own religious group so that if you did in fact have rebellious teenagers—because I do not know how any one of us can guarantee we will not have a rebellious teenager—you yourself would deal with that and somehow or other be able to deal within your group with, say, removing from this teenager the right to carry this until he got over those rebellions, so to speak.

Mr Bal: First of all, you also use a word that the kirpan is a "weapon." As far as the definition of our religious teachers is concerned, the kirpan is not a weapon. This is what the people—

Mrs E. J. Smith: But in a sense, people fear it as a weapon.

Mr Bal: First of all, we have to clarify the definition of what we are talking about here, and the Peel Board of Education is putting the same argument. They are saying that this is a weapon. "If you have to carry a kirpan, you can have a replica of it made up of wood or plastic or something."

We say no. This is not what the code says. It is up to me to decide, it is not up to him to decide, it is not up to the police to decide; this is what the code says and this is what it is.

First of all, it should be taken in the perspective as a religious symbol, a religious emblem, and not a weapon. Second, as you have brought out, the need is to educate the people at large. We have been trying our best to do that, but there is always room for improvement and one of the jobs I am doing here is to educate.

Fear of violence: When a person is baptized, he is told two things to do and two things not to do. One thing he is told to do is not to use the kirpan as a weapon. We cannot be doing the role of the police over that kid or number of kids or number of families who are baptized, but as you mentioned yourself, there is a religious way of battling this, and that is that if anybody uses the kirpan for purposes other than what it is supposed to be, the kirpan and the other things are taken away from him. If somebody has the hair you cannot take it off, but especially talking about the kirpan, you seize that right and he is no longer baptized, so he or she will not be allowed to carry that weapon. Also, if he or she chooses to be baptized again, there are restrictions imposed on him or her, religiously speaking.

But the need is education. There are students who go into the classes, and they are in the classes as we speak in different boards of education other than the Peel Board of Education, and in the last 20 years we have not heard of any incident which has happened because the person is carrying a kirpan.

A person who is baptized is required to be a very disciplined person, including not taking any alcohol or any other intoxicants, and he is forced to perform all the religious duties on a daily and weekly and monthly basis. Given that he has to do his homework, given that he has to perform some household duties, given that he has to perform some religious duties, believe me, he or she will not have time to think of doing any violent act with the kirpan. It is all an educational process and we are trying our best to educate to the maximum we can.

Mrs E. J. Smith: Once again, I am taking the role of the people who are insecure, okay? Would it satisfy the religious significance if it were less available for drawing? In other words, could you wear a religious symbol that was permanently buckled on, rather than—I believe you wear it tucked into a belt, do you not?

Mr Bal: Yes, this was suggested to the Peel Board of Education. Although, religiously

speaking, we cannot really buckle it down so that it cannot come out, we did suggest to the Peel Board of Education that we are prepared to go that far and stitch in such a way that it cannot come out even if somebody tries to bring it out. They did not agree to that either.

Mr Velshi: I have a question on that, please, if I may.

The Vice-Chair: We have Mr Nixon as the next person.

Mr J. B. Nixon: Go ahead.

Mr Velshi: If I understand correctly, there are two types of Sikhs: One is the baptized Sikh and the other is not baptized.

Mr Bal: Right.

Mr Velshi: They are both carrying knives; one is a knife and one is a kirpan?

Mr Bal: No, that is not true. I am not baptized and Mr Singh is baptized. I do not have the kirpan and he does have the kirpan.

Mr Velshi: No, but if you were carrying a knife, it would be a weapon; if he is carrying a knife, it is a kirpan.

Mr Bal: That is right. If I am carrying a knife, that is a weapon, but he is carrying the kirpan, because he is baptized. As you said, there are people who are baptized and you have people who are not baptized and the five Ks are a requirement only for the people who are baptized.

Mr Velshi: So what you are actually saying is that for Sikh children going to school, you are just talking about the baptized child, not the child who is not baptized. That person has no right to carry a kirpan and can be prevented from carrying a knife.

1130

Mr Bal: That is true.

Mr Velshi: You are just talking about the baptized Sikhs.

Mr Bal: I am only talking about the baptized Sikhs.

Mrs E. J. Smith: How does the board enforce that, I think is the question. How do they determine that your son is carrying a weapon and your son is carrying a kirpan, or vice versa?

Mr Bal: Given the controversy which is out there right now and the backlash from the teachers, especially in the Peel board and from society at large, the person who is not baptized will not like to carry that kirpan just for the heck of it.

Also, we have to set some standards of morality here that I will not just put on something and say, "Okay, I am this," when I am not, especially with reference to the religious requirements of a 10-year-old kid or a 15-year-old kid who will say, "Okay, you put on the five and go to school, it doesn't matter if you are baptized or not." I do not think you can even sell that kind of idea to the kids. Only the people who are baptized choose to be in that situation and others do not.

Mrs E. J. Smith: If you were having legislation, it would have to encompass the fact that a group could come forward that took advantage of that. In other words, you could have a group of rebellious nonbaptized Sikhs who decided to wear the religious Sikh symbols without—

Mr Bal: I have not seen a single person who has done that so far. There is no way you can stop any person from doing anything bad if he or she chooses to do that and wants to make sure that he or she does it, but it is a hypothetical question and a hypothetical answer.

Mr Velshi: Like any other rebellious kid.

Mr Lupusella: When Roman Catholic people are baptized, they usually have a certificate, all Roman Catholics. Do you release certificates to people of your community who are baptized and therefore should carry this particular item?

Mr Bal: So far, we do not have any such system, but since this controversy started over a year ago we have been talking about having such a system on a provincial basis.

Coming back to—

Mrs E. J. Smith: That answers some of it.

Mr Bal: If somebody wants to have a kirpan so that he can use that as a weapon, I can assure you that there are many things in the schools which are more powerful and more harmful to the people if he uses them as a weapon than the kirpan.

Mrs E. J. Smith: Still, if we were writing legislation, we would have to address this problem.

Mr Bal: Right, I understand that.

The Vice-Chair: One final question from Mr Nixon.

Mr J. B. Nixon: No, I will pass on it and say thank you for your brief. It was well presented and had some good, thoughtful recommendations.

Mr Philip: Surely, Mr Bal, it would be simple enough to have the parent say, "My child is a

baptized Sikh and therefore has the right to wear a ceremonial dagger," and that would be the admission. Nobody is going to write and say, "My child is a baptized Sikh," if he is not, any more than someone is going to say, "My son is a baptized Catholic," if he is not a Catholic. It would seem to me to be a simple matter of a letter from the parent.

Mrs E. J. Smith: Do you have any teenagers? If they rebel, they do not come to their parents to say, "This is a rebellious teenager."

Mr Philip: No, but if I am the school administration and I see that the kirpan is being worn, then I can say: "I do not have any authority from your parents that you are a baptized Sikh. Therefore, why are you wearing that?"

Mr Bal: Mr Singh is a parent of one of the kids who was thrown out and I ask him to respond to that.

Mr Singh: Regarding your questions about how you would ensure that the person is baptized and how the gentleman said that you need some certificate for that, because we have the fundamentals of Sikhism that the whole person or child or whoever is going to be baptized, we have certain things to do it and that is very hard in life.

You are all the parents of some kids; you can think what it is like. The five-year-old child who is going to be baptized has to get up early in the morning, take a bath every day without prayers and go to the prayers, which are very commonly lengthy. It takes one and a half hours daily for the child to do it, and he has to go all day according to the religious message that he should not eat certain things which are prohibited, he should not do certain things which are prohibited, and in the evening too there is one hour for prayers. The parents are going to bed at the same time as he needs to go to prayers for one hour.

These are things that when a person or boy goes to do every morning through to the nighttime, he goes in a set system that assures you and everybody. If a person is carrying all the five Ks, it is a certificate from the religious sect. Even though he is not performing all the duties every day from morning to evening, he cannot give the assurance that he is baptized or not, because it is a very hard life going through the baptisms. If a child or man or woman goes through that one, it itself is a certificate for the baptism of the child, because that is not a joke.

Even though the nonbaptized try to wear the kirpan swords, tie their hair, comb it every day and pray the one and a half to two to three hours a day for the prayers—I do not think it is easy to just live a good life; in other words, to just show the

people that I am baptized, I am not going to perform the duties. This is our sole concern in becoming baptized to God, perform the duty, then say that I am baptized. It is a certificate for the Sikhs. That is why we do not need a written certificate.

The Vice-Chair: Gentlemen, we appreciate very much your being here. I am just going to ask Mr Wiseman to take the chair.

Mr Bal: Thank you very much.

Mr J. B. Nixon: Can I ask if the Centre for Equality Rights in Accommodation is coming, or do we know?

Mrs Marland: Apparently they are on their way. The staff of the clerk have been in contact with them.

I thought that while we were waiting, I would use the opportunity to place a motion before the committee. I actually have six motions.

The Acting Chair (Mr Wiseman): Mrs Marland moves that the committee request the attendance of the former Ontario Human Rights Commission director of compliance, Jim Stratton, since the committee has received a written request from Mr Stratton to appear, and further, since all other requests to appear by the public in response to the committee's publicly advertised invitation have been scheduled by the committee.

Mrs Marland: In speaking to that motion, I think it is terribly critical that this committee understand that there is a possibility that we may have been misled by two of the witnesses who appeared before the committee.

At the time that Mr Amin and Mr Gordon were before the committee, I did in fact ask them if they had heard from or knew of a Lynn Dowling. At that time, their response to me was: "We were not aware of Lynn Dowling at the time. I was not aware," Mr Amin said.

I have since learned from Mr Stratton's counsel, who is John Laskin, that Mr Laskin himself provided to Mr Amin and Mr Gordon a signed witness statement from Lynn Dowling.

The significance of this statement is that it is part of the debate about the allegations that were made at the time about what was going on with the employment practices at the human rights commission. Since it is a most serious matter that allegations have been made and still have not been dealt with, and because of the fact that Mr Stratton has made the request to the committee to be here and I now have a copy, which is public, of Lynn Dowling's statement, I think it is very significant that we hear from Mr Stratton, since

we have heard from Mr Amin and Mr Gordon that they were not aware of a Lynn Dowling.

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This witness statement of Lynn Dowling's is actually three pages, and I will not take the time of the committee to read it, but I would be happy to pass it around. In essence, she is saying that she worked as a secretary for the special adviser to the chief commissioner, Tanja Wacyk, and she was directed to type an agreement concerning employment between Ms Wacyk and Mr Anand. The purposes of the agreement were to guarantee Ms Wacyk a position with the commission once her duties were completed as special adviser. I suggest to this committee that it is of critical importance that we deal with this issue by having Mr Stratton before us.

Mr J. B. Nixon: Really, this is a reincarnation of a previous motion dealing with the same substance matter which the committee has debated in the past. Mr Chairman, I suggest for your consideration whether or not the motion is even in order. I expect that you will deal—

Mrs Marland: Excuse me, on a point of order—

The Acting Chair: I understand from the clerk that this motion was never voted on, we decided to dispense with it, so I think Mrs Marland's motion is in order.

Mr J. B. Nixon: I suggest to you that the substance matter of this motion has been dealt with in the past. Notwithstanding that, I fully expect you to rule that it is in order and I do not intend to challenge that ruling. What I want to do is speak to the substance and say that this motion serves no purpose. It does not assist the committee in fulfilling its mandate and is destructive and unnecessary.

If you want my reasons for saying that, refer back to the Hansard of approximately three weeks ago when we dealt with a similar motion put forward by Mrs Marland. I will not belabour the committee's time by reiterating all of those reasons again, as they are in Hansard and I see the clock running.

Mr Philip: I am not going to debate the merits of whether Mr Stratton has anything of value to offer us or not. I may have some concerns about whether or not we will benefit from Mr Stratton's testimony or whether it would be of use to our mandate and improve the workings of the Ontario Human Rights Commission, but I do not think that is the issue.

The reason I am going to vote in favour of it is a very simple and clear issue, and that is that I

believe that in a democratic parliamentary system, when we have public hearings we allow anyone who is a citizen of the province to present his or her views and concerns. Mr Stratton, unlike some of the other people who may be in in subsequent motions, has indicated he wanted to appear. Therefore, I will never under any circumstance vote against the right of a citizen of Ontario to appear before a committee that is holding public hearings.

I listened to Paul Fromm the other day. I did not care for what he had to say—I have never cared for anything that Mr Fromm has said or stood for—but I am willing to listen to him. I have even listened to Mr Newton, is it, and some other people whom I may not particularly agree with, but I have always defended their rights as citizens of Ontario to make presentations to this or any other committee. Therefore, I will be voting in favour of it.

The Acting Chair: We have two more speakers, Mrs Smith, and then we will come back to you, Brad, if you would.

Mrs E. J. Smith: Very briefly, because I would look to our lawyer member here to speak as a lawyer—I speak as a layman—the rights of citizens in any judicial or quasi-judicial setting are surely set by the purposes and aims of that group rather than just their rights as citizens. Not anybody who has anything to say is invited here. Those who contribute to the purposes and aims of this group are invited, which is what I would interpret to be the issue at stake here. We have certain objectives. From my point of view, the aim in setting up the agenda was to see those who would contribute to the purposes of this committee.

Mr Philip: Well—

The Acting Chair: Mr Nixon is next and then we will come back to Mr Philip and then to Mr Pope.

Mr J. B. Nixon: I fully agree with what Mrs Smith has said, but I would just like to point out to the committee that it does not lie in Mr Philip's mouth or Mrs Marland's mouth to come here and say they will oppose any attempt to deny any citizen the right to speak to this committee. They both sit on the subcommittee of this committee, which controls this committee's agenda, and both sat in the room less than a week ago and agreed that three or four individuals should not be heard because we were only going to deal with groups.

Do not suddenly throw out to me this sanctimonious notion that anyone who has

something to say should be heard when you go behind closed doors and make sure that a lot of other people did not get heard. We made that as an administrative decision for good reason. What you are doing here has got nothing to do with the right of free speech and I would like you to come out and tell us why you are really supporting this motion. I can suggest to you what it is. I did that last week or two weeks ago on Hansard. I am not going to go through it again.

Mr Philip: Mr Nixon likes to be selective about what went on in subcommittees. In subcommittee he also agreed that Raj Anand would be invited.

Mr J. B. Nixon: I did not do that.

Mr Philip: Yes, you certainly did. Mr Breaugh and the other member on that subcommittee are witnesses to your agreement, as is the clerk.

Mr J. B. Nixon: No. Mr Breaugh and Mrs Marland rejected that proposal and they said, "You have to back and rethink it." I said, "Fine, I'll go back and rethink it." I never made an agreement.

Mrs Marland: Brad, you cannot sit here and lie.

The Acting Chair: Order.

Mr J. B. Nixon: Mr Chairman, on a point of privilege: I did not lie. This woman is putting words in my mouth. This woman understands any agreement requires two sides. She wants to call me a liar; I have got a lot of words I can call her, but I am not going to do it because I am a nice guy.

The Acting Chair: I am sure Mrs Marland will use a different word than to call an honourable member a liar. We do not have that privilege in the House and I do not think we should have it in committee.

Mrs Marland: I withdraw it, Mr Chairman.

Mr Philip: May I continue my remarks, which were so rudely interrupted by Mr Nixon?

The Chair: Yes.

Mr Philip: We will have Mr Breaugh in here in the committee then and he will tell you exactly—

Mr J. B. Nixon: Are you going to do that?

Mr Philip: —what Mr Nixon said, as he told me. His version of the truth is quite—

Mr J. B. Nixon: Are you threatening or promising?

The Acting Chair: Mr Nixon, I hope you will give Mr Philip the courtesy of hearing him out.

Mr Philip: I wish that perhaps we could get Mr Nixon a child psychologist or a Valium or something so that we can conduct the business out of the playground.

Mr Lupusella: Mr Chairman, the gentleman is not addressing the content of a motion. Either you keep him under control or—

The Acting Chair: Order, if we could. It must be terrible for Hansard to try to pick this up, with everybody talking. Could we give Mr Philip a chance to be heard and then I will try to let everyone who wants to talk be heard before we have a vote.

Mr Philip: An agreement was reached on Mr Anand and the Liberals are breaking it.

The other point, though, that Mr Nixon has raised is that the subcommittee, in which I involved myself—I was representing our party—in fact said that we would not invite certain people. The issue then was, and Mr Nixon should be able to at least remember this, that our position was that anyone who had indicated an intention to appear or a request to appear should be heard. We did advertise; we did not restrict that. Our position was that certain other people who may have been suggested to be invited to appear may not have information that would be of relevance.

1150

I think there is a great difference between deciding that we will not invite certain people and deciding that we will cut off certain people. What we are doing and why I am voting in favour of this motion is that I do not believe that in a parliamentary system we say to certain citizens, "No, you may not appear before this committee." That is what was decided in the committee, that certain people who had given no indication that they wanted to appear would not be specifically invited to appear.

In the case of Mr Stratton, Mr Stratton had given an indication that he wished to appear. What Mr Nixon and what the Liberal members of the committee are trying to do is refuse the right of that citizen, who wished to appear, to appear. We have not done that with any other witness before this committee and I will not be a part of any kind of authoritarian system that says to a citizen in Ontario, "You have no right to appear."

Mr Pope: Just very briefly—I will not take much of your time—I have been on a few committees over the years. I have never witnessed this kind of an argument about the goings-on of the subcommittee.

But I think maybe the committee had better, behind closed doors, sort itself out on that,

because I think it is quite frankly unbecoming to all of us, including myself, to be engaged in this kind of discussion right now. So I will just move on. As I say, I think it behooves all of us to try to sort this kind of stuff out and hopefully we will not expose our guests to a repeat of this. I do not know what your points were three weeks ago, so please excuse me. I will read it in Hansard before I come to the next meeting.

I did do some reading on this issue. I have heard some of it in the Legislature. By the way, I used to work with Mr Sopinka in a number of hearings of the human rights commission when I was articling in law as a young lawyer here in Toronto, so I am aware of the internal workings of the commission at that time. I was involved in the Angela Clark case and a number of other cases involving the accounting department at the city of Toronto. There were a number of extensive hearings that went on at the time. So I do have some background.

I guess all I am saying is that I have a feeling that Mr Stratton is involved in that particular point of view, which you may or may not accept. He seems to be involved in one of the controversies, whether it is a really important one or not; it may be important to him and not to this committee. That is up to the committee to decide. Whether or not it is a furtherance of personality infighting that really is a sideline to the role of the commission and how it is going to function from now on is an assessment that maybe others have already made. I have not made it.

On balance, if someone wants to appear who has been involved in the commission, I guess I think we should be hearing him. But again, Mr Nixon may have put some valid arguments on the record which, for purposes of time, he does not want to do today. I appreciate that. I guess I wanted to just support my colleague for the moment and say to our guests I apologize for some of what has gone on, but I guess there is a background to this too.

Mr Velshi: The route of this process was laid out at our initial meeting and I would like to just discuss that rather than going into who should be coming forward now or not. We decided we would advertise and we decided we would set a time limit by which people could write to us asking to make a formal presentation. We also decided whether to be restricted to groups of people rather than individuals. I would maintain that all along.

Even if this was misunderstood, I am pretty certain Mr Stratton knew that we had advertised because Mr Stratton seems to know more about

this committee than all of us put together. He did not bother responding to that advert of ours. Now suddenly he wants to come in here and make a formal presentation. Just going by our own rules, let's not change midstream. This was all decided and I think it smacks of mischief when we see this trying to come in at this point, and that is why I am going to vote against this particular motion here. We did ourselves agree as a group upon certain rules and the Hansard will show that. All I am saying is let's stick by those rules and not change them midstream.

Mr Lupusella: If I may, I would like just to express a few words in relation to the particular motion. I would like to address myself to the motion per se. I do not think that this committee is faced with the fact or the reality as to whether a person should appear before this committee or not. I think that we are faced with a motion which has to do with so many components based on the premise of allegations and nothing else. Therefore, I am not prepared to allow certain individuals to appear before this committee just because there are certain allegations made by other individuals. As a result of that, I do not foresee any concrete purpose for this committee under the mandate of this committee. Therefore I am going to vote against this motion and I move, Mr Chairman, a motion to vote on the motion.

The Acting Chair: You move that we vote on the motion?

Mr Lupusella: Yes.

Miss Roberts: Excuse me, Mr Chairman.

The Acting Chair: We do not have a seconder here.

Miss Roberts: I will second the motion.

The Acting Chair: We have a motion on the floor by Mrs Marland. I do not think it needs to be read again; we have all heard it. Are we ready for the motion?

Mrs Marland: Mr Chairman, first of all, someone who has spoken cannot move that the motion be called, as Mr Lupusella has just done. Second, in all the committees that I have been a member of the mover of the motion does have an opportunity to speak last and sum up. I would like to at least be extended that courtesy.

The Acting Chair: Certainly.

Mrs E. J. Smith: On a point of order, Mr Chairman: Would you clarify first whether the motion is accepted on a technicality or should we get Miss Roberts to move it? Mrs Marland questioned the right of the motion to be moved.

Mrs Marland: I am sorry—

Mrs E. J. Smith: Before you speak to it, which I recognize.

Mrs Marland: But I am on the list to speak, I am sorry.

The Acting Chair: I understand from the clerk, who is more knowledgeable than myself in this, that Mrs Marland's motion is in order and that Mr Lupusella's is out of order.

Mrs Marland: Mr Chairman, I think that it is important—

Mr J. B. Nixon: On a point of order, Mr Chairman: It is 12 o'clock and you need unanimous consent of the committee to continue.

Mrs Marland: Oh, we are going to shut the door. The Liberals are going to shut the door. They do not want to open the cupboard.

Mr Velshi: Move that.

Mrs Marland: All right, I will move extension.

The Acting Chair: That is correct, but you move, Mrs Marland, that we extend the hours?

Mrs Marland: By five minutes

Mr J. B. Nixon: That is fine.

The Acting Chair: The agreement of the committee, the clerk informs me, is that we do stop at 12 o'clock unless we have unanimous consent.

Mrs Marland: I just moved—

The Acting Chair: I take it from Mr Nixon, unless he withdraws—

Mrs Marland: He has just agreed.

Mr J. B. Nixon: Mrs Marland proposed that we extend for five minutes and I have agreed to that.

Mr Philip: Mr Chairman, what does that do then to the witness we are already delaying? Are we not going to hear that witness today then?

Mrs Marland: Have they arrived?

The Acting Chair: Yes, they have.

Mr Philip: It seems to me that out of courtesy to that witness we should extend it for a half an hour so that we can hear the witness as well.

The Acting Chair: Can we have an agreement that if we can have this vote in the next five minutes, we hear our witness, who has come and listened to us debate for the last half hour, till 12:30, if I could extend him that courtesy?

Mr J. B. Nixon: I would just like to put on the record that, as a point of order, I am prepared on behalf of my members to agree. Some of us have meetings to go to that are supposed to begin right

now. We planned on the committee conducting its business in an orderly manner. I have said this motion is destructive; I say the timing of the motion has been destructive. I did not realize the witness was here to make a deputation and we have been sitting around debating this. We could have done this next week. I do not know why we are doing it now. We have frustrated our witness, we are frustrating members of the committee. It is in your hands to proceed.

1200

The Acting Chair: If I could, Mr Nixon, I think our witness was maybe five or 10 minutes late and that is why Mrs Marland brought her motion forward at that time.

Mr J. B. Nixon: But I would like to have heard that witness.

The Acting Chair: Yes. Are we in agreement then that we get this motion presented in the next five minutes and then grant the witness 25 minutes to be heard?

Mrs E. J. Smith: Mr Chairman, as a point of information, there would be no votes at the end of the presentation? A couple of people have to leave.

The Acting Chair: Yes, all right. But we will hear the deputation and we will have the vote here momentarily?

Mrs E. J. Smith: Yes.

Mrs Marland: If I am given five minutes now, I think that it is very important that I am not interrupted and I plead for that consideration. I want to respond to Mr Velshi's comment that now someone in a late stage wants to come and make a presentation. He said it smacks of mischief.

The reason Mr Stratton has made the request to come before this committee is because of the testimony of Mr Amin and Mr Gordon, who said they did not know of a Lynn Dowling. When Mr Stratton's counsel, John Laskin, who I would respectfully suggest is a well-known, highly respected counsel in this city, says that he gave Ms Dowling's statement to Amin and Gordon and he sat with Mr Stratton through his two-hour interview with Amin and Gordon, and Amin and Gordon tell us that they have no knowledge of Lynn Dowling, then I think this is a terribly serious situation. That is the reason, after the fact, that Mr Stratton is making the request to come here to set the record straight on the government's internal report on the Ontario Human Rights Commission.

I have to tell you, with respect to Mr Nixon's statement that he never agreed with Mr Anand,

that I think perhaps the best way to clear up what happened in the subcommittee is by noting that it was the first subcommittee that Mr McGarva attended with Mike Breaugh, who is not here, myself, Mr McLean and Mr Nixon. I put forth five names. At that time, Mr Nixon said that the only one of Mrs Marland's names he would accept was Mr Anand's. I think, with respect, I would like to ask Mr McGarva if that is his recollection of that subcommittee meeting.

Miss Roberts: I believe that comment is out of order. On a point of order, Mr Chairman: We are arguing a motion that is on the floor and the content of the motion, not the content of what has gone on in a subcommittee. If I might just put it straightforwardly, let us deal with the motion that is there.

Mrs Marland: I can ask Mr McGarva a question.

Mr Philip: A statement has been made. It is perfectly in order at any time to ask the clerk of the committee for some information.

Mr J. B. Nixon: If I may ask a question.

Mrs Marland: In my five minutes?

Mr J. B. Nixon: I think I am entitled to re-examination. If you are calling a witness, I get to re-examine him.

Mr McGarva: Does the committee want me to respond? I am happy to respond.

Mrs Marland: Yes.

Mr McGarva: All right. I think the point Mr Nixon made was that the general topic of witness selection was before the subcommittee. There was no agreement by the subcommittee as to who any or all of the witnesses would be. Mr Nixon did say what you suggested with respect to Mr Anand. But I think when he says today that, in the absence of agreement on the whole of the witness issue, he was not making a binding commitment, that is certainly how I took it.

Mrs Marland: But you agree that he did say he would accept only Anand out of my list of five.

Mr J. B. Nixon: I get a re-examination, one question. Is it not true, Mr McGarva, that shortly after I said that, Mr Breaugh said, "Well, that's totally unacceptable and you'd better go back and rethink your position," and I said, "I will do that"?

Mr McGarva: Those were his words.

Mrs Marland: That is right.

Just to complete what I want to say, I feel that when Mrs Smith says that the committee can decide who will best contribute to the purposes of

the committee, then I think that is saying the Liberal government wants to be selective about its witnesses. If the Liberal government votes down this motion, then it is saying it does not question the credibility of Mr Amin and Mr Gordon, who came to this committee as representatives of the government. They are both civil servants, one with the Ministry of Natural Resources and one with the Ministry of Health. If the Liberal government today wants to accept testimony before this committee which may be misleading and is not willing to find out whether or not it is and question the integrity of John Laskin, even if it does not want to believe Mr Stratton, then I think it is a significant move on the part of the Liberal government to keep the door closed. I have to ask what it is that this Liberal government is afraid of. Why are they afraid of the truth?

Mr Lupusella: Can I make a comment?

The Acting Chair: I think we should go on with the vote now, because we are taking more valuable time from our presenter.

Mr Lupusella: I am calling for the vote.

The Acting Chair: All right. We understand the motion. All in favour—

Mrs Marland: I would like a recorded vote, Mr Chairman.

The committee divided on Mrs Marland's motion, which was negated on the following vote:

Ayes

Marland, Philip.

Nays

Lupusella, Nixon, J. B., Roberts, Smith, E. J., Velshi.

Ayes 2, nays 5.

The Acting Chair: Perhaps we could call on our presenter now, Bruce Porter.

Mr J. B. Nixon: Mr Chairman, before we proceed, as I said, unfortunately some of us have to leave due to prior obligations. Can I have your assurance that, in our absence at the end of this meeting, no motions put by any member will be dealt with by the committee, other than a motion to adjourn?

The Acting Chair: As you know, I am new to this committee, but I would give that commitment, yes.

Mr J. B. Nixon: Thank you.

The Acting Chair: We will end at 12:30 today.

Mr Philip: Mr Chairman, Mrs Marland and I are prepared to give the assurance to Mr Nixon that we will not be moving any motions today.

Mr J. B. Nixon: Thank you.

The Acting Chair: All right. We have before us—and I am sorry, Mr Porter, to hold you up like that— Mr Porter who represents the Centre for Equality Rights in Accommodation. You have heard that we will try to finish by 12:30. If you want to leave a little time for questioning, or if you want to take all the time to present your case, you go ahead and do it. Thanks for presenting it and waiting on us to resolve this other problem.

CENTRE FOR EQUALITY RIGHTS IN ACCOMMODATION

Mr Porter: Thank you, Mr Chairman. The apologies are mine for arriving a little bit late. It was no discourtesy at all for me to sit in on half an hour of hearings. I kind of miss this milieu. I was involved, I guess almost three years ago, before another standing committee of the Legislature, the standing committee on administration of justice. At that time, I was representing the predecessor organization of the Centre for Equality Rights in Accommodation. That was the Committee for Equal Access to Apartments and we were urging that the justice committee recommend the adoption of certain amendments to the Human Rights Code.

We had formed a provincial coalition to present evidence to the justice committee of the incredible hardship that was caused to low-income families with children by adult-only rental policies and to young people by the exclusion from housing of people who are under 18, particularly young mothers. We proposed two amendments to the code, one of which would prohibit adult-only restrictions and another which would allow equality of access to 16- and 17-year-olds.

In support of these proposed amendments, a large number of single mothers and other low-income families and young mothers came before the justice committee to recount moving and tragic stories of weeks and months of homelessness, of living in hazardous and demeaning environments, of being trapped in violent and abusive relationships, of having even to give up their children to the care of the children's aid society because they could not find housing.

Clearly the Human Rights Code was not working and there were some very serious gaps that needed filling. We felt that the amendments we proposed were important and all three parties agreed with us that those gaps had to be filled. Those amendments became part of Bill 7 and

closed the most blatant gaps of protection in the area of housing.

1210

There are others on which I would love some time to have the chance to come before some committee of the Legislature and ask for further amendments. These are things that we have learned about since 1986 and we have learned from experience.

But gaps in legislation were not the only problem, and it was clear in the submissions to the justice committee that there was shocking evidence of inadequate enforcement of existing protections, particularly in the area of housing. Single mothers all reported that they faced widespread discrimination because of receiving public assistance and because of their marital status. Most landlords simply refused to rent to them as soon as they reported that they were single parents or that they were not employed outside of the home.

Yet these protections were already in place in the code. Statistics from the human rights commission suggested that this kind of discrimination was very rare, but what was presented before the justice committee was something quite different: it was being described as being universal. When we visited people in shelters in the process of organizing around these proposed amendments to the code, we were told the same story, that if you are in receipt of public assistance you do not have a chance of getting a place and that all landlords, as soon as they find that out, will refuse to rent to you.

So clearly there was a major problem of enforcement which justice committee could not address. They could only suggest amendments to the code and leave it to both the commission and, perhaps, to advocacy groups to try to do something with those amendments. It seemed to us that one of the things that was very much lacking was an advocacy organization focusing on human rights and housing. In the areas of the code which the statistics suggest are being more effectively enforced, there are very active advocacy organizations at work. Whether it is on employment-related concerns where often complainants can get assistance from unions, on disability where organizations like the ARCH and many others have done crucial advocacy or on race relations, there are existing advocacy organizations. It is only where you have those kinds of organizations that the commission seems to be able to do its work more effectively.

But when we came to seek funding for an advocacy organization in the area of housing, we

found that there is really no recognition within provincial funding structures of the role that advocacy organizations play in the work of the human rights commission. We were bounced between the Attorney General, the Ministry of Labour, the Ministry of Housing and then the newly created Ministry of Citizenship, and at each ministry we received the same answer, that there was really no funding structure in place for human rights advocacy organizations. Finally, the Ministry of Community and Social Services came to our rescue and more recently we have received some very important funding from the Ministry of Housing.

I think that our experience is very telling. I would urge this committee to recommend better funding for advocacy groups in the area of human rights. The human rights commission cannot do its work alone; it has to work with advocacy groups. That really, I think, is the focus of what I want to talk briefly about today, how the commission works or does not work with advocacy groups, because that is really the nature of my experience and expertise, rather than speculating on internal issues within the commission of which I really have no direct knowledge.

I think we need to understand what the human rights process is like from the standpoint of someone claiming human rights. It is at best isolating and confusing to individual claimants, particularly to poor people, women, those with literacy problems, immigrants or ethnoracial minorities. Some of that is the fault of the commission, and this committee should make recommendations for improvement. The commission has not been good at producing materials that are accessible to those who do not read well, for example. Its staff is inexperienced at working effectively with support networks that exist around various equality issues.

If a single mother receiving family benefits approaches the commission alone with a complaint of discrimination, it is highly unlikely that she will receive any assistance from a human rights officer in linking up with any network of support or with other women in the same situation. If she survives the literacy test of the intake questionnaire and the onslaught of indecipherable quasi legalisms and bureaucratese, she will eventually find herself facing a room full of managers and counsel for the respondent, usually all men, at a fact-finding conference or a conciliation meeting. She will have received little help or education in knowing what kind of settlement to ask for when it comes to settlement discussions, and there is really no material that I

know of that has been produced by the commission to assist her in assessing what would be a reasonable settlement to ask for.

In fact, she will often face the very same prejudices and discriminatory behaviour from the human rights officer and the process as she received and is complaining about from the respondent. She will be grilled on whether she makes enough money to qualify for the apartment that she applied for, she will be treated as if her income somehow makes her an undesirable tenant in the sense that it is not high enough, she will be asked to prove that she was not lazy or slovenly in her search for affordable accommodation when she wants to prove that she has attempted to mitigate her losses and sometimes she will be treated as if she is out for a bit of a free ride when she proposes a cash settlement which may be above what the human rights officer thinks is appropriate in the case. We have seen complainants in this situation even threatened by the investigating officer with having additional income reported to the authorities when the investigating officer mistakenly understood that it was illegal to earn any additional income to family benefits.

The complainant is in need of something very different from all of this. She is in need of supportive relationships. She is alone in a foreign world, sometimes for the first time in her life taking a stand against attitudes and prejudices that have abused her for most of her life and have a profound emotional impact upon her. If she develops any relationship of trust with the intake officer, that is soon lost when the file is transferred to an investigating officer. The human rights commission assigns investigating officers on the basis of the region where the respondent is, so that if the head office of a landlord happens to be in another region, then it is investigated from that office.

Even the neutrality of the investigating officer, when the complaint is properly investigated, often offends the complainant. She feels accused of lying when the officer questions her on the details of the respondent's reply, and usually respondents reply by making contrary allegations about a person's tenancy. And so the complainant is now having to defend herself against charges of all manner of things that arose in her last tenancy or in her current one. So neutrality, which of course is the objective of the investigating officer, can be experienced by the complainant as quite the opposite, as a blaming and a kind of repetition of the history of abuse and the denial of that by people in authority.

There are also aspects of the process itself which make it difficult for the investigating officer to remain neutral. The investigating officer invariably spends more time in the course of an investigation at the respondent's place of business than at the complainant's place of residence in housing cases. It is actually quite rare for an investigating officer to visit a complainant or to come into firsthand contact with the details and the reality of homelessness or of the consequences of being denied accommodation.

Most of the investigation will take place in the property management office or in the landlord's office, and a human rights officer has to get through his day by being civil and friendly with the people he is working with. So there is a natural kind of relationship that develops between the respondent and the investigating officer which is lacking sometimes between the investigating officer and the complainant. So that if a complainant has to go to another region for a fact-finding conference or a conciliation meeting, often she is coming into a room where the respondent already is quite familiar with the investigating officer but the complainant is meeting him or her for the first time.

This also shows up in terms of class and language. It is more likely for an investigating officer to maybe have sublet a basement apartment or to be living in an adult-only condominium than to be in receipt of family benefits assistance. So there is a language and a familiarity of experience which is subtly there and perceived by the complainant. So that, particularly when lawyers for the respondent arrive and you are dealing then with an even more formal language and a more inaccessible language, it is all terribly isolating and sometimes abusive of the complainant.

There is a lot that the commission can do to remove some of these systemic barriers to human rights remedies. But one thing is clear: The commission is not itself an advocacy or community-based organization. It has no structure of accountability to groups whose issues of disadvantage it addresses and has many other roles to play which interfere with its relating in a supportive and effective way with human rights claimants. It has no expertise in particular areas like housing, sexual harassment or social assistance and it has not made an attempt at developing particular specialties among its staff.

So it is clear that what is absolutely necessary, along with the kinds of changes that have to come with the commission, is a recognition of the

importance of the work of advocacy groups with rights claimants and a developing relationship between the commission and those groups, which is at this point largely lacking.

Our experience has been that it is extremely difficult to establish an effective advocacy organization. Not only is there no funding targeted to such groups in the province, but there is little awareness in any of the funding mechanisms that human rights applies to a broad range of disadvantage and that you do not have to have a job in order to claim rights under the code. That latter point is still in dispute, I guess, because it is a matter of whether or not a lot of our complaints on behalf of people who have been denied accommodation because they do not have an employment reference are legitimate and then whether they have human rights claims within housing if they are not employed. It is also reflective of the general bias that suggests that human rights applies to employment more than to any other area.

1220

We pressed the Premier to consider moving the commission out of the Ministry of Labour and we had high hopes when the Ministry of Citizenship was established, but, to be honest, we have not noticed a tremendous change in those fundamental attitudes. The commission still spends three quarters of its time and resources on employment-related complaints and only one tenth of its complaints are housing related. It produces detailed policy statements on employment issues, such as pre-employment medical testing, all of which are very important, but it does not produce anything on such crucial issues in accommodation as what information a landlord may require on an application form or may ask for in an interview, things we have known in employment for years and years.

The Quebec Human Rights Commission has produced a model application for accommodation and is devoting considerable effort to encourage landlords to use it. Nothing like that has been done in Ontario. In all the years that complainants have been approaching the Ontario commission to report applications and questions at interviews about prohibited grounds of discrimination, not one complaint has been drafted by the commission or board of inquiry appointed to hear it in order to get at some sort of decision on that very important issue.

You may have noticed in the extensive press coverage of the recent problems within the commission the same focus on employment issues as being the essence of the commission's

mandate. Jim Stratton, whose appearance here you were debating as I was waiting, was quoted in the *Toronto Star* as describing his job as investigating unfair hiring practices. He was the regional director of compliance, but I am sure that he was largely right. That is probably what he was spending his time doing, but the Human Rights Code covers more than employment.

We still hear human rights officers refer by accident to landlords as employers, and commission lawyers before boards of inquiry will slip and refer to bona fide occupational qualifications when dealing with housing cases. According to the statistics, accommodation cases are more likely than employment cases to be settled by human rights officers, rather than ever reaching a board of inquiry, but the settlements are on average one fifteenth of the cash settlements awarded in employment cases. Last year, not a dime was awarded in cash settlements for anyone who claimed discrimination because of receipt of public assistance—not a dime.

The discrepancy between accommodation and employment cases may have something to do with the fact that in employment cases you are claiming for lost wages, but I think it has more to do with human rights officers undervaluing the costs of homelessness and encouraging minimal settlements. In many cases, denial of housing denies people access to employment. I am sure I need not remind members of this committee that the most disadvantaged in this province do not have jobs.

As an advocacy group specializing in housing-related issues and developing an expertise and accountability to the community of people who are denied housing in this province, we have managed to work with the constituency that was largely ignored by the commission. Over one fifth of our users are social assistance recipients, half are single parents and three quarters are women. A large proportion are racial ethnic minorities, although in the majority of cases they come to us with complaints of discrimination on other grounds, such as receipt of public assistance or family or marital status.

I will include in submissions that I will give to the committee afterwards a chart of our breakdown of cases. It may be interesting for you to compare those with the commission's statistics. The commission's statistics would suggest to you that receipt of public assistance, again, is a very minor occurrence. I think there were only 21 or 22 complaints on that ground in the last report of the commission, making up one per cent of the commission's load. It makes up almost a quarter

of our case load. The commission's statistics would suggest that sexual harassment exists only in employment and does not seem to exist in housing accommodation. Our experience is that it is very frequent in housing.

We find that also within the commission there is a tendency to think of systemic discrimination and equity issues as being employment related. It is very rare that issues of what are called reasonable accommodation or systemic discrimination are addressed by the commission in housing-related cases. Most of those issues that are being addressed now have been brought to them by our work.

The reason that this commission's statistics are distorted in this way is that there have been prevailing attitudes that have been never tested legally and never opened to the sort of voice of the disadvantaged to challenge. Social assistance recipients were told for years by human rights officers that if a landlord believed that their income was too low, it was legitimate for the landlord to refuse to rent to them.

What that meant is that every time a complainant came forward with a complaint of discrimination because of receipt of public assistance, on investigation it would show up that her income was very low and that she would be paying a high percentage of her income towards rent and the investigating officer would usually be convinced that to have denied her accommodation was reasonable.

It was only after we filed a complaint for a woman on social assistance alleging that economic discrimination of that sort is itself a contravention of the code that this issue has been addressed, but I am not saying that really shows that the commission is not doing its job properly. I think that in a lot of ways that is the way it should be working and that advocacy groups have the closer connection with the kinds of issues that need to be addressed and we need to be free to bring those to the commission.

The Acting Chair: Mr Porter, you can go right to 12:30 pm, but we will be closing off the committee at 12:30 and I have one speaker who has indicated that he would like to ask a question. You may want to finish the allotted time or allow a little bit for questioning; whatever you prefer.

Mr Porter: I would suggest that the commission has to look at developing a more healthy and consultative approach to working with advocacy groups.

We and other organizations in the equality rights field like CERA or like the Women's Legal Education and Action Fund are developing new

models where if we have a case which we feel is important to a larger constituency, we set up a project team to consult with people who are from that group to ensure that even our litigation strategy is structured according to the knowledge and the expertise of the group itself. The general model of those consultative groups that we have set up is that they not be dominated by lawyers, but that the constituents themselves have a say in how the case is argued.

The trend at the human rights commission in some ways seems to be in the opposite direction. There is a sense that the commission has to control its own process, that the litigation strategy that is determined by the commission is determined by the commission itself. I think it is very important that we recognize that the commission is representing a larger public interest than itself and that it can only get access to that public interest if it follows proper consultative approaches with groups.

I fear that in some ways the commission, like I do sometimes in my job, is trying to do too many things at the same time and ends up doing nothing well. I would suggest that we could focus just on three fundamental things that the commission needs to try to do well.

Its first role, and the most important one in many ways, is to provide access to human rights claims to be heard in a fair manner and to recognize the importance of groups to provide assistance and representation to human rights claimants. In many ways, we end up in battles with human rights officers who resent our intrusion into the affair because they feel that they are capable of doing all the things at the same time, both being an advocate and ensuring a fair process. I would suggest that you cannot do both things at the same time and the main thing is to ensure a fair process and ensure good representation of the complainants.

The second area is public education in proactive measures. Here again, we have to work together. You have to work with the constituencies themselves.

Finally, in the area of litigation it is important to have a very well-set-out way in which there is consultation on every element of litigation strategy on all the important cases that affect disadvantaged groups. The human rights processes are absolutely crucial to a healthy society. When they work, they allow powerless and silenced individuals and groups to raise fundamental questions about how society is structured. It is always going to be a critical voice that is heard through that process. We may not always

like the questions it asks. That voice is not the voice of the commission, it is the voice of rights claimants, and the commission's job is to let it be heard. It is probably the most important job of all the government and it has been a largely underfunded job.

The Acting Chair: Thank you, Mr Porter. We are about at 12:30 of the clock, but, Ed, you had your hand up. Can you ask one fast question?

Mr Philip: Maybe I can just summarize in three sentences what I think I hear you saying and then you can say, "Yes, that is the message I am giving," because you have a fairly long brief and you have tried to do it fairly quickly in the time you had.

First of all, I think you are saying that while it is important that you fund the quasi-judicial body such as the Ontario Human Rights Commission, when you are dealing with people who are vulnerable in various ways, it is important to fund advocacy groups to give them moral support, but also to give them legal advice and so forth. I have heard you say also that there has to be more consultation between the human rights groups and the advocacy groups to improve its process and the way in which it deals with cases, I suppose.

You have suggested that there are whole areas of systemic discrimination, if you want, particularly in the housing field, which the other jurisdictions and other human rights commissions have dealt with and which this human rights commission has not dealt with. You have given the example of Quebec. I suspect that you would be in agreement with the new chair's statement that she is quite in favour of putting a particular thrust on the human rights commission's looking into systemic discrimination and possibly presenting papers and positions to the Legislature on that.

I did have one question concerning what the Quebec Human Rights Commission has done.

You said it came out with a lease form. First, can you supply us with a copy of that, if you happen to have it handy? If not, we can get it through our research. Second, are you suggesting then that one of the things that would be illegal for a landlord to ask in that lease form is income?

Mr Porter: Yes. The model that the Quebec commission has moved towards is to encourage landlords not to judge people's likelihood to default on rent or be good tenants on the basis of their level of income. They have looked at alternative ways of assessing applicants, such as—

Mr Philip: Credit ratings.

Mr Porter: —references.

Mr Philip: Credit ratings would be legitimate?

Mr Porter: No, they are aware of the problems that arise with credit ratings as well. Most low-income people do not have good credit ratings.

The Acting Chair: Mr Porter, I think we will have to cut it off there. I understand from the clerk that you just have the one copy of your brief, and as some of the members had to leave a little early, perhaps the clerk will get it and make copies available to the members who had to leave.

Miss Roberts: Besides, I know you did not read it all and I would like to refer to a couple of points.

The Acting Chair: Yes, and we apologize for cutting about 10 minutes off your time, but we appreciate your coming, giving your brief and being patient with us, and the committee's having the patience with the acting chairman so that we were able to hear our witness, cutting into your lunch hour and all that. I appreciate that too. Thank you.

The committee adjourned at 1234.

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

Chair: McLean, Allan K. (Simcoe East PC)

Vice-Chair: Marland, Margaret (Mississauga South PC)

Breaugh, Michael J. (Oshawa NDP)

Farnan, Michael (Cambridge NDP)

Fulton, Ed (Scarborough East L)

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Roberts, Marietta L. D. (Elgin L) for Mr Owen

Smith, E. Joan (London South L) for Mr Fulton

Velshi, Murad (Don Mills L) for Mr Kozyra

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Clerk: Brown, Harold

Staff:

McGarva, Bernard, Legal Counsel; with Shibley, Righton and McCutcheon McNaught, Andrew,
Research Officer, Legislative Research Service

Witnesses:

From the Advocacy Resource Centre for the Handicapped:

Baker, David, Executive Director

From the Ontario Council of Sikhs:

Singh Bal, Manohar, Secretary Singh, Jasbu

From the Centre for Equality Rights in Accommodation:

Porter, Bruce, Co-ordinator



No. A-3

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Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on Government Agencies

Ontario Human Rights Commission



Second Session, 34th Parliament

Wednesday 22 November 1989

Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday 22 November 1989

The committee met at 1019 in room 228.

ONTARIO HUMAN RIGHTS COMMISSION (continued)

The Chair: I call the standing committee on government agencies to order. We will deal with the review of the Ontario Human Rights Commission and I would like our legal counsel to give us an update on where we have been and where we are going with regard to the review.

Mr McGarva: I think perhaps I will just refresh people who have been with us from the start on the issues that we have been discussing. For people who have not been here from day 1, I will bring them up to date on some of the matters which we touched on here.

The first witnesses we heard from set the background for us. There was first the representative of Coopers and Lybrand, which prepared a report in 1987 on the Ontario Human Rights Commission and made certain recommendations as to how its functioning could be improved procedurally and also in terms of direction and attitudes.

Second, we heard from Messrs Amin and Gordon who prepared their report this year in the late spring, early summer, in the aftermath of the events which centred on the issue of employment equity and the hiring practices at the Ontario Human Rights Commission.

So while their report dealt largely with the hiring issues, it also spoke, in part, to the same issues that the Coopers and Lybrand report dealt with. So those reports gave us a very useful starting point in terms of analysing the history of the commission, where we have been and where we were, and, I suppose, where we are now. Probably the most important witness we heard from in our hearings was the current chief commissioner, Catherine Frazee, and she gave quite an outstanding outline of her hopes and aspirations for the commission. She responded, both in her presentation and in some written materials that she has given us, to the issues raised in the Coopers and Lybrand report, and we will talk a little bit about what some of those issues are shortly.

In addition to those three witnesses, we have also had a number of public submissions from interested action groups as well as individuals, and the presentations have been wide-ranging,

useful and, for the most part, very constructive. Those presentations, and the presentations of the witnesses whom I identified individually, have focused on a number of areas which we should be highlighting and perhaps asking some questions about in the report that will come forward from this committee.

Without prejudging the issue of whether there should be additional witnesses, because I know the committee is going to deal with that shortly, there is one area where we are somewhat deficient in terms of our information base, and that is a fairly simple and discrete area. It has to do with the relationship between the commission and the ministry. Ms Frazee advised us that the commission is currently negotiating and finalizing a draft agreement with the ministry that will set forth its functions and jurisdictions inter se itself and the ministry.

We were hopeful that we would have that by now; Ms Frazee, I think, indicated that it would probably be forthcoming now or in early December. That, I suggest to the committee, will also be an important document for the committee to have in hand before it finally reports, simply because from a functional point of view in identifying the relationship that the commission has with the government as a whole, that document will probably serve as a benchmark in defining the relationship, both now and in the years to come.

Aside from that, we have heard from various groups taking, as you might well imagine, different sides of various issues, and it is now in our hands to move forward on reporting on the recommendations which have been made to us.

Just to highlight three or four issues, and I will take these in order of the frequency that they were mentioned before us by witnesses, the key issue has to do with the efficiency of the processing of complaints by the human rights commission and what we refer to generally as the backlog issue. How can the human rights commission, with the mandate and jurisdiction it has, operate even more efficiently? Are there particular recommendations that we as a committee may wish to make in that respect?

Some of the members here have talked in terms of creating firm deadlines, procedural deadlines which would require, for instance,

respondents of complaints to respond formally within a certain fixed period of time, failing which there would be a finding against the respondent almost on a default basis. Whether or not the committee wishes to pursue something as specific as that I will leave in your hands, but it is certainly food for thought.

I think we should come forward from this committee with at least some views, a little bit more than motherhood views, on how specifically the commission can handle its workload better and process the complaints more expeditiously. I think there is general consensus that it is not simply a matter of throwing additional funds at the commission, but maybe it has to do with increasing specialization of the workload of the various employees of the commission as well as the commissioners. Maybe it has to do with some procedural concepts, which we can discuss. So the backlog issue is a very important one.

The relationship of the commission with the ministry and with the government is something that has been touched on. We do not currently have a regular reporting format for the commission. There is no legislative requirement that the commission report to this committee or any committee on a regular basis. There is a sense that the public and the members would like, I think, to have some greater emphasis on a regular reporting format which could provide an opportunity to assess the performance of the commission in addition perhaps to the existing reporting function between the commission and the ministry. But again, that is something that is in your hands and I certainly would appreciate your thoughts and guidance on that.

One of the issues that we have dealt with is the employment equity issue and the hiring practices. We have heard from Ms Frazee her confidence—and it was indeed supported by the confidence of Messrs Amin and Gordon—that the results which obtained in the hiring practices in recent times would not obtain any more, simply because there is now in place an employment equity program in which the commission is confident and which it believes will assist it in serving as the model which it must be for a government and the community. To my knowledge, I do not think we have yet received a copy of that employment equity program and we should ask for that before we finally report. Certainly I think it was the view of most of us that Ms Frazee had been persuasive in expressing her confidence that the use of that program would be very helpful in the future.

I guess just one final issue has to do with the morale at the commission. Everyone wants to know what one should do to improve the morale. Sometimes the best answer—and the answer we certainly heard from a number of witnesses, both from the commission and otherwise—is to sit back, allow the new leadership to work on the agenda which is being developed and make the best use it can of the talented people it has on the commission without being placed under a microscope by this committee or others. To a certain extent, the message we received was that they really need an opportunity now to, in an atmosphere of calm, have a chance to do what they know how to do best.

I think we take that message and have to pay some heed to it, but that does not mean that we ought not to make some recommendations. Again, I am in the committee's hands as to precisely where it feels the recommendations should be made.

I think, by way of a general background, that is what I have to offer today.

1030

Mrs Marland: I appreciate the suggestions that Mr McGarva has made about the two areas that we still need more information on before the committee starts to finalize the report. I particularly agree with his point that the relationship between the commission and the ministry is very important. I certainly hope we will be able to get some more information on that area before we start to reach a final draft.

I do wish to continue with the motions I started to introduce at the last meeting. In the meantime, between the last meeting and this meeting, I have raised some questions with the Minister of Citizenship (Mr Wong) in the Legislature. In response to those questions, the minister has repeatedly said that since I am a member of this committee I should be asking those questions in this committee. It was his understanding that I had done that and that this committee was investigating those matters that I had been asking him about.

The fact is that the main question I was asking him was one that I had not raised at this committee before. It pertains to Anne Molloy's letter of resignation, dated 10 May, of which I have given a copy to everyone this morning. The minister commented that this was a six-month-old letter. That is perfectly true, because it is six months since it became evident outside of the human rights commission that there were some questionable hiring practices taking place within the commission. That started into the whole

subject, which resulted in the government House leader's resolution to refer this matter to this committee. The fact that we are dealing with it six months later is simply because when this committee met on 7 August to decide when we could deal with it, the date that was set for that was the beginning of October. So I want to place on the record why it has taken this long to get to this matter.

However, Anne Molloy's letter is none the less a very significant part of what we are dealing with here. Because it is a 12-page letter, I will not read it into the record. Maybe the clerk of the committee can tell me whether I can submit this so that it becomes part of the committee reference material. Is that in order?

The Chair: It can be considered an exhibit, if that is what you want.

Mrs Marland: That is what I am requesting.

Miss Roberts: Like anything else. It is just an exhibit like all other exhibits.

Mrs Marland: Sure. I am just asking that it be part of the material that this committee has.

Miss Roberts: I see no problem with that.

Mrs Marland: I would particularly draw attention to page 8 of this letter. I want to be sure that the committee members know what this letter contains before I move my first motion. Maybe I just have to read this paragraph rather than putting it in my own words. It is the second paragraph on page 8, and it is Anne Molloy speaking in her letter of 10 May 1989 to Mike Gage, the executive director. The letter began, "Dear Mr Gage," and this is the second paragraph on page 8:

"Subsequently, I met with you and told you unequivocally that I would definitely not hire Tanja Wacyk. I further said I would rather not get into a showdown with the chief commissioner over this and asked if some other solution could be found. I do not remember the date of this meeting, but I do distinctly recall a brief discussion about the policy director job. You told me that the competition had closed and that Tanja had not applied but there might be a way to reopen it. I next learned that a determination had been made that none of the applicants for the policy director position were qualified and that an internal search would be conducted. Shortly thereafter, Tanja Wacyk was hired.

"Several weeks ago, I received a telephone call at night at my home from you. You told me that you had been interviewed that day by Alan Story and been asked if I had told you in a meeting that I would not be hiring Tanja Wacyk

as associate director. You further told me that you had denied that such a conversation took place and wanted me to know what you had said because Alan Story might call me. I told you that I had not heard from Alan Story, but that if I did, I was prepared to either refuse to talk to him at all or refuse to comment on whether we had had such a discussion. I told you I was uncomfortable doing any more than that and you said that that was fine and that I should be guided by my own conscience. I did not hear from Alan Story thereafter and thought with considerable relief that he was not going to report on that conversation.

"On May 5, the Story articles appeared in the Star."

The Chair: Are you going to read the whole letter, the rest of it?

Mrs Marland: No, I just wanted to finish with the statement.

The Chair: You finished the paragraph that you indicated you wanted to read.

Mrs Marland: I am just reading the first sentence of the next paragraph, which says:

"On May 5, the Story articles appeared in the Star. I have heard about but have never seen the alleged letter agreement between Raj Anand and Tanja Wacyk. I don't know if it exists. The rest of the article about the Wacyk hiring seems accurate to me. Story's main point in the other article was the failure of the commission to hire any visible minorities for its senior management positions. While, as I have said, I do not believe that racial discrimination played any part in those hiring decisions, it is, in my view, undeniable that all of the senior management positions are filled by whites, myself included. I did find it surprising and disappointing that the entire management of the Ontario Human Rights Commission was white, as did many of the commission staff and members of the community."

I think it is very important to recognize that Anne Molloy is a lawyer. She was head of the legal services for the Ontario Human Rights Commission. She had been a senior partner with McMillan, Binch and decided of her own choice that she wanted to work in the human rights field. She is a very committed, dedicated individual in the practice of law, but she particularly wanted to work in the human rights field, and as you can read elsewhere in her letter, she really loved what she was doing. It was a very stressful situation for her to make a decision that she had to finally resign.

There is no question that in this letter she is saying that the executive director, to whom she is

writing, had called her and asked her to in fact deny that a certain meeting took place and that a certain discussion took place. We in our Progressive Conservative caucus feel that it is totally unacceptable for a senior public servant to ask a staff member under him to lie.

The Chair: Mrs Marland, could I have your attention for just a minute? We heard this morning from our legal counsel with regard to the background and the update and I am wondering if the committee feels that we should have other people before it. If it does, then we should come to that conclusion. Obviously, that is a point you are trying to make, that there are other people whom you are mentioning in the letter. If it is your wish that you want other people to appear before the committee, then it will have to be in the form of a motion.

1040

Mrs Marland: I have the motion, and that is why I am speaking to the motion that I am going to place. I want the committee to understand why I am placing this name before the committee.

The Chair: Mrs Marland—

Mrs Marland: I would move that the committee request the attendance—

The Chair: Could I have your attention, Mrs Marland? I had indicated that, with the words that we had from our legal counsel, I would like to clean up that matter and I would appreciate it very much. I would love to get into the other aspects that you want to get into, but I was also wanting to hear if there were any comments from any other member on what our legal counsel had to say. Then if you want to proceed, I would be pleased to do that.

Mr Philip: Our legal counsel has pointed out that one of the areas in which we have a scarcity of information is the relationship between the commission and the ministry. That is an area where, according to our legal counsel this morning, we are lacking in information.

At the time that the government agreed to an inquiry into the human rights commission, the Minister of Citizenship, Gerry Phillips, assured the Legislature that there would be a complete and open inquiry. Similarly, Liberal House leader Sean Conway assured the opposition House leaders, and I confirmed this with my House leader this morning, that there would be no restrictions on who might be called as witnesses.

At the early meetings of the steering committee, it was agreed by Mr Nixon, and just to make sure I have checked this three times with Mr

Breaugh, who is our member on that committee, that there was an understanding that Raj Anand would be called.

Mr J. B. Nixon: On a point of order, Mr Chairman: The member is entitled to his views, but I do not believe he is entitled to misrepresent anything I have said which has been confirmed by our legal counsel, who was present at that meeting. If you want to say what Mr Breaugh said, that is fine, but do not misrepresent what I said.

Mr Philip: Well—

Mr J. B. Nixon: I know the press is here. I know you guys are going to be playing to the press, but do me a favour: Do not misrepresent what I said, as was confirmed by our legal counsel.

Mr Philip: Mr Chairman, I believe that the member is using unparliamentary language and perhaps you can ask him to retract it.

Mr J. B. Nixon: No.

The Chair: I have not observed that. However, we dealt with that in the last committee meeting. We went through the same thing, according to Hansard.

Mr Philip: There was a clear understanding, according to both Mike Breaugh and the conservative member of the steering committee, that Mr Anand would be one of the witnesses before this committee. That is clear both from Mrs Marland's understanding and from my understanding of what went on. There is certainly a clear understanding that the House leaders had expected that Mr Anand would be called. Therefore, I would ask that we—

Mrs E. J. Smith: Mr Chairman, on a point of order: I do not think that the member can speak for all the House leaders. I sit in on House leaders' meetings and I did not hear any such clear understanding.

The Chair: You have made your point.

Mr Philip: The government whip may wish to use whatever she wishes as rationalizations for not having this as an open inquiry, but there was a clear understanding, if you will read Hansard, from Gerry Phillips' statements, the statements of the Premier (Mr Peterson) and the statements of the government House leader that this would be an open inquiry.

To not call Mr Anand, who is the centre of this issue, to not call a person other witnesses have said initiated new directions that are of value to the commission, is to not do the homework of the

committee and in fact is to simply restrict this inquiry.

Therefore, since Mrs Marland has her first motion, which is similar to the motion that I indicated last week I wished to present, I would ask that Mrs Marland can move that motion and we can debate the first motion.

The Chair: Thank you. Mrs Marland.

Mr J. B. Nixon: Mr Chairman, I thought I was on the list to speak.

The Chair: I am sorry; you were.

Mr J. B. Nixon: Just very briefly, I realize that things are going to get hot and heavy here and everyone is going to be advancing his views as vigorously as he can, but I also understand that Mrs Marland has five motions. In the interests of everyone on the committee, I think it might be appropriate that we deal with them together. I am not suggesting that you not have them dealt with, but maybe we can sort of condense the time and manner in which we deal with this.

Mrs Marland: I am happy to put four of them in one and keep one of them separate.

Mr J. B. Nixon: I have not even seen them, so it is really up to you. I am just trying to encourage you to—

The Chair: Okay, Mrs Marland, you can bring us up to date now.

Mrs Marland: When Mr Nixon says he has not seen them, he is certainly very aware of the names I have in my motions, because they are the same names that I have now been bringing to the subcommittee and I have mentioned twice in the full committee, so I have not changed my position.

I will put the four names together. I have already referred this morning to Anne Molloy's 10 May letter of resignation between her and Mr Gage.

Let me just give you the reasons for the four names and then I will move the four names, if that is quicker.

The Chair: Fine.

Mrs Marland: Another person I was going to include in the motion is Tanja Wacyk, since she is central to the discussion of the rigged hiring practice at the Ontario Human Rights Commission in Anne Molloy's letter to Mike Gage.

The next person is Lynn Dowling, who is the former secretary at the human rights commission and is alleged to have typed an agreement for Tanja Wacyk which was to be signed between Tanja Wacyk and Raj Anand. At the last meeting, I gave everybody on this committee a

copy of Lynn Dowling's signed witness statement.

The reason that Lynn Dowling is so significant to our hearings is this: On 3 October, when we reviewed the Amin-Gordon report with Mr Amin and Mr Gordon here, I asked Mr Amin if he knew of Lynn Dowling. I said, "Did you think to ask the typist for this document, this agreement that you were told about that existed between the chief commissioner and Tanja Wacyk guaranteeing her another job? Did you think to ask the typist, who everybody knew was Lynn Dowling, for that document?" Mr Amin's answer was, "We were not aware of Lynn Dowling at the time. I was not aware."

I would submit to the committee that Lynn Dowling's testimony before this committee is very crucial because Mr Amin was in fact misleading the committee through his answer, because John Laskin, who was counsel for Jim Stratton, gave Lynn Dowling's witness statement to Mr Amin. That is why I feel we have to hear from Lynn Dowling.

I also feel it is obvious that we have to hear from Mike Gage, who is the former executive director of the commission.

So Dowling, Molloy, Wacyk and Gage are the four names that I will move together. To be very clear, Tanja Wacyk is the director of policy and research for the Ontario Human Rights Commission. Anne Molloy is the former Ontario Human Rights Commission director of legal services. Lynn Dowling is the former secretary at the human rights commission to the chief commissioner's special adviser, who at that time was Tanja Wacyk. Mike Gage is the former Ontario Human Rights Commission executive director. I move that the committee invite those four individuals to attend our hearing.

The Chair: Mrs Marland moves that Lynn Dowling, Anne Molloy, Tanja Wacyk and Mike Gage be invited to appear before the committee.

1050

Mr Philip: In the interest of an open inquiry, in the interest of clearing, if you want, the shadow that the former minister talked about as covering this commission, in the interest also of keeping with the basic principle, which I think is that members in committees normally are accommodated when they request a witness to appear on a particular matter, I will be supporting Mrs Marland's motions.

Mr J. B. Nixon: As you know, we have debated this issue quite vigorously in the past. It is true that it has not been put as a motion, but we have debated it quite thoroughly. I just want to

very quickly cover some of the issues that we have debated.

First, the mandate of the committee that was agreed upon between the three House leaders, if you review the motion referring this matter to this committee, reiterates at least three times that the job of the committee is to review the role, structure and mandate, if I recall correctly, of the commission. In order to do that, it could call witnesses, it could review reports and do a number of things. We have had a full set of hearings devoted to the role, mandate and structure of the commission, which is what we were asked to do.

What we have done has been very productive. Aside from many witnesses, we have heard from Messrs Amin and Gordon, the authors of the report reviewing the hiring practices of the commission in the past. They have been before the committee and answered questions in some great detail. That is only one small part of the full range of hearings we have had. They were forthright in their investigation. They said they probably spent a couple of hundred man-hours, if I recall correctly. They interviewed and reinterviewed witnesses to a much greater extent than we ever could in this committee.

Many witnesses have come before us and have been asked by Mrs Marland and perhaps by Mr Philip, if I recall correctly, "Do you believe that we should call Mr Anand or Ms Wacyk or Ms Molloy," or various questions of that nature, and the answer has always been, "No, we think that is inappropriate, we think it is destructive to the commission and we think it is wrong." That is the nature of the answers that have been given unanimously.

We view—I view—the job of this committee as being to assist in putting the Ontario Human Rights Commission on its proper course. Some of the areas that remain to be explored include looking at the memorandum of understanding that is being drafted or has been drafted between the ministry and the commission—very appropriate questions to be asked about the relationship between the commission and the ministry. That is what a memorandum of understanding sets out. That is one of the things that remains to be looked at.

The persistence of this issue truly troubles me. I see it as serving no one's interest—certainly not the citizens of Ontario, certainly not the people who want to bring complaints before the Ontario Human Rights Commission and certainly not the present human rights commission.

The new chairman, Catherine Frazee, whose appointment was lauded, I believe, by all three parties, certainly by all members of this committee, sat through all the hearings, heard all the evidence and testified that there is now an affirmative action hiring program in place—and they will be producing that to the committee—which was not in place in the past and perhaps was the cause of some of the hiring problems the human rights commission had. In any event, they are in the past. Our job is to look to the future; our job is not to engage in what I humbly submit is a witchhunt for which no corrective action can be taken. I am urging all members to defeat this motion and the subsequent motion.

Mrs E. J. Smith: Mr Nixon, the member for York Mills, has stressed very strongly the aspect of this that a witchhunt would do none of us any good and that we have heard this message repeatedly from the people who appeared here. They appeared one after another, representing different groups that feel the need for this commission to be active and to deal with the problems that are there in their everyday lives. They want this group to be given all the freedom and support possible to move forward and help them improve their lot in life. I think this is the dynamic stuff of personalities that we have to work with.

We have a new idealistic group. Its members undoubtedly will have some ongoing problems to work out as they set themselves on a new course. They need to have a sense of full support from the citizens of Ontario. They have it from our witnesses time after time, "Move ahead and help us with our problems." That is what I heard and that is what we have a responsibility to do.

The second thing we heard most often from them was the terrible problems that come from the workload of these people and the fact that it is difficult for this group to deal with so many tremendous problems. We had a lot of discussion about whether the energies of these people should be put into systemic problems or whether they should deal with individual cases, because obviously systemic problems are the way to the answers, but then often these are demonstrated by individual cases. So while it is hard to limit either one, there was a recognition that something the commission would have to address with great care is how it uses its time.

Everybody recognized the importance of this time and of the morale and sense of purpose that goes into the use of this time. I think anything that is done to add to or create friction in the staff who are putting together this examination of the

commission internally—we are only doing it externally; they now have to do it internally, to determine their onward path. We must do everything we can to assist. I do not think that these motions will help us move forward in any way. This was the plea of group after group, that we get on with moving forward and not look back.

There has been a general recognition; it is not as if nothing has happened. We sit here knowing that we have a brand-new commissioner. I sat and watched this commissioner listening to all of these presentations; I had never met her or heard her speak. When she came forward, I could not have been more impressed. We have there someone whose brain is tremendous, whose compassion is obvious and who has a sense of direction that I am delighted to see. I want to do everything I can to help those delegates who pressed us on to the future and this new chair who can lead us there. I do not think anything that has been proposed will help us to do those things.

1100

Mrs Marland: I want to concur with Mrs Smith's comments and say that I also could not have been more impressed with Catherine Frazee. She is obviously a tremendously capable, dynamic woman for that position of chief commissioner. That is not the question that I am raising at all this morning.

When Mrs Smith says, "It isn't as if nothing has happened," the very recommendations of the Liberal government's own interministerial report, the Amin-Gordon report, were that certain competitions be redone. They have not been redone and they are not going to be redone. Everything is staying as it was. So the very questions that started this furore in the first place, that led me to be someone in the House who asked for these public hearings—

I must say at this point that I take personal exception to this whole hearing being called a witchhunt because since I am the only person who can be construed, I suppose, as a female asking the questions on this committee and asking the questions in the House for the hearing, it is an attack on me personally to say that it is a witchhunt. If it is a witchhunt, that is their terminology.

What I am simply trying to do and what our caucus is trying to do is re-establish the credibility by finding out what the problem was. Now, when Mr Nixon says the persistence of this issue troubles him, I want to tell you that the persistence of this Liberal government to sweep this under the rug troubles me.

We have not heard from anyone who ever worked in the human rights commission. We have not heard from one single deputation who is on the inside today. We have heard from the chief commissioner; we have not heard from a single staff person. We have not heard from a single person who litigates the Human Rights Code in this province. Yes, we have heard from many groups and yes, we have heard, "Move forward", and yes, we agree with moving forward, but it is like holding a hearing into any problem: you cannot judge what the steps forward are until you identify what the problem is.

Frankly, I think the government's position on this whole issue from the very beginning has been a total sham because if you look at the motion itself—which took us two months to get through, and it was finally passed on 25 July—referring this matter, the important, pivotal point in this motion is that our review had to include the report prepared by the Ministry of Citizenship. That report, as we know, was written by Mr Amin and Mr Gordon. We now know that when Mr Amin and Mr Gordon sat here and gave their testimony one of their answers was not factual. How we can decide that we are going to continue with this hearing without getting to the bottom of the fact that they misled this committee is beyond me. If we do not want to hear the truth, then we will vote against these motions.

Frankly, I think that for this committee to say it is not necessary to hear from anybody who ever worked either inside, or formally inside, the human rights commission throws the whole process into a total farce. I really feel that for the government members to say from the beginning that this was a witchhunt is insulting to all those community groups out there which have a very real concern for the fact that something happened in the Ontario Human Rights Commission for which, in fairness to Raj Anand, he has become the fall guy.

The Liberal government moved Mike Gage, the former executive director, in a lateral move into another position. You cannot supposedly blame him for anything now because he is not in that job any more. Raj Anand is the one who took all the heat, quite frankly. The government gets him to resign; he resigns and suddenly everything is fine. It is like going into any kind of hearing, in a court of law, for example. How would it be if a judge said, "Oh well, we cannot listen to that evidence because it is six months old," which is more or less what the Minister of Citizenship

suggested when I submitted Anne Molloy's 12-page letter.

I think what is happening here is unbelievable if these government members today vote against the motion to get at the other side of an issue. Even if by hearing from the other side we can be more convinced than ever that all those allegations were baseless, even if we can find out why Mr Amin said he did not know Lynn Dowling when in fact he had received a signed, witnessed statement from her, even if we get all those answers, at least then we would be in a position where we can say we have been willing to hear from both sides of an issue.

I do not know any kind of committee hearings in this House where we advertise for public input and we selectively decide from whom we will not hear. You can name any committee and any piece of legislation, you can name any matter that has been referred to public hearings in this Legislature. The history of this Legislature has always been, if it is a public hearing, we hear from the public.

In this case, this committee is being very selective and it only wants to hear from one side of the issue. I think it degrades all of us who might be party to shutting out the other side. If the government wants to do that, then it will be on its neck that it decided it only wanted to hear from one side.

Mr Philip: I find the language that Mrs Smith used unfortunate. She calls this a witchhunt and a matter of personalities. It is more than that. It is a matter of whether a body responsible for ensuring fairness in the workplace was fair to its own employees and to its potential employees. That is the issue.

It is sad when the opposition is accused of going on a witchhunt when we are doing our job, simply trying to find out what happened, trying to find out what was the truth.

This is a matter of who polices the police. It is as simple as that. If you have a body that has a responsibility for inspecting others and then cannot be adequately and fully inspected itself when there is a problem, then I think you have a basic problem in the democratic process.

I think the public wants to know what happened. There is a cloud over the Ontario Human Rights Commission. They want to know what is going to happen and the only way in which they can do that is to have a full and open inquiry, which is what this government promised when after two months it decided that one way of getting the heat out of the House was to put it into a committee. In order to do that, they made an

agreement to have a full and open inquiry. That is what Gerry Phillips asked for.

Furthermore, even the motion said that it would include the report prepared by the Ministry of Citizenship. That is what this motion is dealing with, that report of the Ministry of Citizenship.

The government says that this is a witchhunt, but it was not the opposition members who asked for Raj Anand's resignation. We made it fairly clear we were not asking for Mr Anand's resignation. Instead the government forced him to resign and felt that by burning him at the stake, it would take the heat off itself. That is what the issue is. Now they do not want to give him an opportunity to come before us and tell us exactly what happened from his perspective.

I find it shocking that the government House leaders could have one agreement, that the minister could assure a full and open inquiry and then, simply by changing ministers, the government can say that is not what it agreed to.

We spent a lot of time in this committee. We have devoted a lot of energies. The opposition members do not have as many members to go around as the government has and I can tell you that Mrs Marland and myself and Mr Breaugh have spent an awful lot of time trying to understand this issue. Our expectation was that at the very least any witness, any member of the public who said that he had information to provide that would be helpful would be allowed to appear.

1110

We saw that was not the case. We assumed that the understanding that Mr Anand would appear would be recognized. We have had a whole series of hearings. Quite frankly, if the government members are going to whitewash this, are going to sweep everything under the rug, are going to have a completely restricted inquiry, obviously then they will also want to have a completely restricted report, one that suits their interests and not a full and open report as is customary in committee.

If that is the kind of committee that you want, fine, write your report. I will not be part of it. I will resign from this committee, because if that is the kind of coverup that you are going to do, then you are having a farce in the democratic system and I am not going to be a part of your farce. Write your own report but you cannot count on us to help you.

Mr J. B. Nixon: I just want to make a minor point and perhaps correct the record. As the members of this subcommittee—you know that

the subcommittee includes a representative of each party—we reviewed the list of people and groups that have applied to appear before this committee. As a subcommittee, all three parties agreed that there were a number of individuals that we would rather not hear from because it was our view that their testimony would not be helpful.

Mr Philip, Mrs Marland and myself all participated in those discussions. What we have come down to is a disagreement on some other witnesses, a lot of whom have not even applied to appear before us, and it is our view that it would not be helpful, that is all, just as we have unanimously made that decision about other witnesses.

Mr Philip: On a point of order, Mr Chairman: There was never at any time, at any meeting of the subcommittee that I participated in or that Mr Breaugh participated in, an agreement that any witness who wished to appear would be refused. I clearly did not think that Mr Fromm would have very much of relevance to offer. I have heard his testimony before on various other things but I agree that in a democratic system Mr Fromm and Mr Newton and a lot of other people whose views I may strongly oppose have the right to appear and make their presentation. Indeed, if they make some points that the public or the press or anyone else feels are acceptable to them, then they have that right to make that case in a public way and on the record.

I have never at any time in my 14 years as a member of the Legislature voted to stop someone from appearing who asked to appear before a committee. I find it shameful that now the Liberals have this huge majority, they wish to cut off citizens who have asked to appear.

In the case of Mr Anand, it was always understood that Mr Anand would appear.

Mr J. B. Nixon: Mr Chairman, I just have a quick question of you. You did participate in those subcommittee meetings. Do you recall or do you not recall the subcommittee making a decision not to hear from certain individuals who applied to appear before us and we unanimously agreed not to hear from them?

The Chair: There were a lot of names that had been raised in the committee with regard to who should be heard and who should not be heard. I was never of the opinion that anything was made in committee that somebody should not be heard from or somebody should be heard from. I always wanted it brought to the full committee and then to make the decision on who should be heard and who should not be.

Mr J. B. Nixon: But we did have a discussion. You recall that at the last subcommittee meeting there was a list of individuals who applied.

The Chair: There were always names brought up but there was never any firm decision made.

Mr J. B. Nixon: Okay, no firm decision, but there are some we have not heard from who wanted to appear before us.

The Chair: There may have been; I am not—

Mr Philip: On that point, would you not recall also that the position that the members of our party always took was that anyone who wished to appear should be given an opportunity, that while we considered some people we might like to invite would be of more relevance to the committee than others, we at no time suggested that anyone should be cut off if he or she wished to appear and that indeed at all times members of both the Conservative Party and the New Democratic Party stressed the need for Mr Anand to appear, as well as anyone else who had given an indication that he or she wished to appear?

The Chair: I would agree with that. Mrs Marland.

Mrs Marland: I do not want to comment on Mr Anand. That is my last and separate motion, so I will refrain from my comments for the moment.

The Chair: Could we proceed with the motion? Mrs Marland has a motion that has been well debated.

Mrs Marland: I would like a recorded vote.

The Chair: She would like a recorded vote. It shall be a recorded vote. Would the clerk call the names?

Mr Philip: May I have two minutes? Our members are—

The Chair: You will have a five-minute recess. Indeed, any other members, if they want, can do that.

The committee recessed at 1116.

1122

The Chair: If we could call the committee back to order, I want to bring to your attention that we have just had a sub slip brought in here for Jackson in place of Pope and I cannot accept it unless I get unanimous consent of the committee.

Mr J. B. Nixon: We accept.

Miss Roberts: You have the consent of the committee. We are more than pleased to see Mr Jackson at any time.

The Chair: Is there unanimous consent of the committee that the late sub slip will be accepted?

Agreed to.

We are now prepared to vote on the motion Mrs Marland has placed and it is a recorded vote. Would the clerk call the names, please?

Mr Philip: In favour? "Shall the vote carry?" is the question under this section.

The Chair: They are to be polled individually, I understood, on a recorded vote.

The committee divided on Mrs Marland's motion, which was negatived on the following vote:

Ayes

Farnan, Jackson, Marland, Philip.

Nays

Kozyra, Lupusella, Nixon, J. B., Roberts, Smith, E. J., South.

Ayes 4; nays 6.

The Chair: Mrs Marland has another motion, I believe.

Mrs Marland: My last motion.

The Chair: Mrs Marland moves that the committee request the attendance of the former chief commissioner of the Ontario Human Rights Commission, Raj Anand, to attend before the committee.

Mrs Marland: In moving that motion, I want to say that there are about seven recorded comments by Raj Anand at the time that the questions started to emerge about what was going on with the hiring practices at the Ontario Human Rights Commission where Mr Anand said that he would welcome the opportunity to answer any questions in public. When finally the government motion of Sean Conway, as government House leader, passed through the House on 25 July, at that time the comment again came from Mr Anand that he would welcome an opportunity to come before this committee and once and for all get the whole situation out in the open.

The other aspect of this that I think is so critical to the credibility of what goes on here today is that every time I have mentioned my five or six names—actually, for a long time they were five names that I was bringing up in the subcommittee, and also I have mentioned them in camera with the whole committee here; they became six names when I added Lynn Dowling—on all of those occasions I always had Mr Anand as one of my five names and on more than one occasion Mr Nixon said that Mr Anand was the only name on my list that he would accept. So we have never been led to any other understanding by him, as spokesperson for the government, than that it

was willing to hear from the former commissioner.

I think, frankly, that to have heard from Ms Frazee was very constructive to know where she sees the commission going in the future, but for the Liberal government to make Mr Anand resign and, as I said a few minutes ago, be the fall guy for the whole situation and then not give him an opportunity to speak when he has indicated that is what he wanted to do is just adding insult to injury for him as an individual but also for the process as a whole.

I think that the human rights situation in Ontario today is at risk of being put in a position where if someone wants to enforce the Human Rights Code, someone who is supposed to be violating it could very easily say: "Well, look what they do in the commission themselves. They have rigged hiring practices which have been questioned and still are unproven, one way or the other, except that their own government review said that competitions should be redone and they are not being redone." If somebody wants to question the enforcement of the Human Rights Code today, he might as well say, "Well, we don't need to worry, because human rights are not practised at the commission itself." That is why this motion to at least hear from Raj Anand is so critical.

The Chair: What is your motion?

Mrs Marland: I did read it, but I would be happy to read it again.

Mr Philip: It was read. Everyone understands the motion.

Mrs Marland: That Raj Anand appear; I did move that.

Mr Philip: In an attempt to get the heat off themselves, the Liberals burned Raj Anand at the stake. Now they do not want to give him an opportunity to appear. The opposition never called for the resignation of Raj Anand; what we wanted was a full inquiry so that we could reconstruct the human rights commission and make it as effective as Raj Anand indicated he wanted to make it when he initially took office.

It is fairly clear that it was the understanding of the House leaders—and Dave Cooke assured me that that was the understanding when I spoke to him only an hour ago—that Raj Anand would be a witness and indeed that no witnesses would be restricted from appearing. We had the assurance of Gerry Phillips, the Minister of Citizenship, that it would be a wide-ranging and open inquiry. Indeed, the Premier made similar comments.

I cannot believe that the matter, as counsel has brought out this morning, of the relationship of the government with this supposedly impartial tribunal can really be understood without calling Mr Anand to express his impression of what that relationship was, what that structure was, what the formal and, if one existed, what the informal relationship was, and how we can make corrections, if you want, under the new chair unless we understand exactly what the pitfalls were previously.

I say to you that to vote against this is to clearly not keep a promise, not keep an understanding, and maybe that is the value this Liberal government places on human rights. We saw that in the legislation that was introduced yesterday, the most antihuman rights legislation I have ever seen in any Legislature, vis-à-vis the new Ombudsman Act. Maybe it is just that this government, with its large majority, does not have a respect for human rights. I had thought that attitude was restricted to perhaps the Attorney General (Mr Scott), but I guess maybe it is related to the government rather than just one or two ministers.

1130

I think that for us not to call Anand is to waste our time. The groups out there that I have spoken with want to get to the bottom of things. They want to know what happened. They want to know who is policing the police, so to speak. Without calling Mr Anand before us, I think we are doing a disservice to Mr Anand, we are doing a disservice to the clients of the human rights commission and we are just creating the impression that this whole exercise of an open inquiry is nothing but a farce and an attempt by the government to take the heat out of the House when they found that it was too hot and deal with it in a committee, which they promised would have free rein and which now they are muzzling.

If this motion does not carry, and it is similar to the one I indicated on several occasions I would be moving, then I simply see no reason to dignify this committee with further presence and to dignify any report that might come out of this committee, since it is fairly obvious that the government members, if they are going to stifle any kind of open inquiry, are also going to stifle any kind of legitimate report of that inquiry. I will not participate in dignifying such a report by signing such a report.

The Chair: Thank you. I would like to indicate to the members that after we are done dealing with this, we have some other business

that I would like to bring up and deal with. Mr Nixon, you are next on the list.

Mr J. B. Nixon: Before I begin, let me just say that I do not think ad hominem attacks on the Attorney General serve the committee well and I do not think it serves any member particularly well to make them, particularly when he is not present to respond.

I just want to go over a couple of things—

Mr Philip: He introduced this bill yesterday while I was not there to respond.

Mr J. B. Nixon: Indeed, there are a number of things that have been said that concern me.

Mr Philip talks about the job of this committee to be the task of reconstructing the commission. Well, the committee cannot reconstruct the commission. It cannot. It is sort of an image that gets loosely batted around, but we do not have the power or the authority. We do not have a budget. We do not employ civil servants. We do not reconstruct the commission.

Our job was to have hearings, to hear from the public, and consider the future, mandate, role and structure of the human rights commission and make recommendations. We have had extensive hearings on that. We have had a number of witnesses who have come from the various communities who have a particular interest in the future, role, mandate and structure of the human rights commission, and when asked by Mr Philip or Mrs Marland whether or not Mr Anand should be called as a witness, they said no. They all expressed a view that it would be destructive to the commission. If we are here to reconstruct the commission, I do not think we should be embarking on a destructive course of action.

I feel somewhat compelled to remind members of this Liberal government's record in the human rights area. Indeed, we have put over \$4 million additional dollars into the human rights commission to hire more staff so they can get on with their job.

As was agreed upon by all members, we have ensured that the executive director now reports to the chief commissioner, not the deputy minister, as was the reporting responsibility in the past. It was a significant change because it meant the commission reports to the chief commissioner, who is in charge. In response to the Amin-Gordon report, the commission now has an affirmative action hiring policy. Changes have taken place and continue to do so. Everyone has said it is the best Human Rights Code in North America. The new commissioner, having heard all the testimony, is committed to making it the best human rights commission in North America.

It is a proud record. I am not embarrassed to say that one bit.

Mr Philip suggests there is a conspiracy, one that I do not believe exists. It is a paranoid view of how we operate. There are six Liberal members here. All but one sat through all the hearings. We have formed our views. As a member of this committee. I heard clear and consistent testimony that the witnesses Mrs Marland wants to call, particularly Mr Anand, would not serve the committee's purpose. I heard no one, other than Mrs Marland and Mr Philip, say otherwise. I cannot support this motion.

Mrs Marland: You did originally.

Mr J. B. Nixon: I want to clear up one thing. There have been a lot of allegations about what I did and did not say. We went over that last week and asked our counsel, Mr McGarva, independently hired by the committee, to say what took place at that infamous subcommittee meeting. I am not going to tell you what I said; I am going to tell you what he said.

Mr Philip: You didn't just say it once; you said it many times.

Mr J. B. Nixon: Mr Philip, behave yourself, please. Mr McGarva said, and I am reading from Hansard: "I think the point Mr Nixon made was that the general topic of witness selection was before the subcommittee. There was no agreement by the subcommittee as to who any or all of the witnesses would be. Mr Nixon did say what you suggested with respect to Mr Anand."

Mrs Marland: That is the point.

Mr J. B. Nixon: What I suggested, in your words, Mrs Marland, was that Mr Anand should be called. Mr McGarva went on, "But I think when he says today that, in the absence of an agreement on the whole of the witness issue, he was not making a binding commitment, that is certainly how I took it."

I asked him, "Is it not true, Mr McGarva, that shortly after I said that, Mr Breaugh said, 'Well, that's totally unacceptable and you'd better go back and rethink your position' and I said, 'I will do that'?" Mr McGarva said, "Those were his words."

So the simple point was that there was no agreement. Mr McGarva has confirmed that. You have a problem—

Mrs Marland: No.

Mr Philip: No, you have a problem.

Mrs Marland: We do not have a problem.

The Chair: Order.

Mr J. B. Nixon: Mr Philip talks about the community he speaks to; he suggests that that community wants Mr Anand before this committee. None of that community appeared before this committee. All that community who appeared before this committee, all of the people who applied here before this committee said—

Mrs Marland: You are suggesting we asked everybody; we did not ask everybody who came before this committee. That is garbage.

Mr J. B. Nixon: —"We do not want Mr Anand called."

Mrs Marland: We did not ask everybody.

Mr J. B. Nixon: Every one of those witnesses whom you and Mr Philip asked—

Mr Philip: I asked one.

Mrs Marland: I think I asked one.

Mr J. B. Nixon: —said, "No, we do not think he should be called."

Mr Chairman, as Mrs Marland always insists, give me the time to make my points and then she will have have a chance to make her points.

In summation, I do not think this is productive; I think it is very destructive; I think it is very unfortunate for the commission. Those are not just my views; they are the views of the present chief commissioner; they are the views of various members of the community who appeared before this committee.

1140

Mrs E. J. Smith: I just want to end this presentation—I will not say to end because I am not the last, but from my point of view, on my behalf—where we began this morning. Not everybody was here for McGarva's résumé. I would remind the members that Mr McGarva is here as an independent legal counsel to us all. He is helping us all to know where we are at and what is left of the responsibilities of this committee. These are my notes from it. I am sure he will correct the record on anything he disagrees with, but these are my brief notes:

(a) Date deadlines for response of complaints to be dealt with, the length of time, whether we should have deadlines;

(b) We should as a committee have specific recommendations re how the commission deals with its workload, both procedural and structural;

(c) We should be considering the responsibility of the commission and how it reports to the Legislature;

(d) Although much has been done already and put in place on employment equity, we should

get a copy of the employment equity plan here at the committee and examine it;

(e) Finally, morale was a something that was repeatedly mentioned. The general comments as we went through the hearings were that we should move forward, that the commission needed calm—and I believe I am quoting from Mr McGarva—"to do what they know how to do best." I believe he was quoting from the commissioner.

The Chair: Mr Farnan is next and I hope we get on with the vote shortly.

Mr Farnan: This is a very revealing situation. The resolution that I look at suggests that this committee would be able to look at the report prepared by the Ministry of Citizenship that reviewed and responded to allegations regarding the staffing and financial decisions made by the commission.

That is a very specific report and I think we are talking about justifying the actions of the commission and improving the process and operation of the commission. What better way to do that than to have Raj Anand available to speak to the committee? I can recall the hoopla in the House with the appointment of Raj Anand. It was something that was hailed with a great deal of fanfare and enthusiasm, I think, on all sides of the House. It was shortly after that that we had the events which saw the removal of Raj Anand, and we do not have the opportunity of hearing what he has to say. We do not have the opportunity of hearing his side of the story and we do not have the opportunity of hearing how he would improve the process and operation of a commission which he has a great deal of information about and experience in.

One can imagine, for example—if I may draw the analogy—what would the Houlden inquiry be without Patti Starr? What would this inquiry be without Raj Anand? I think I am talking about the ability to contribute information, but I have come to the conclusion, watching what is happening here, that this exercise of what was meant to be an open inquiry is in fact a farce.

In some ways, I have to admire the Liberal discipline, where people come along and perform like performing seals, where they vote en bloc, where the good soldiers do their duty regardless of what they think or what the facts may suggest. This is something that is not new. It is something that I could probably admire over the long term. Indeed, I believe that since I became a member of this House there has never been one Liberal member who has voted against the party line on any issue, whether it was Meech

Lake or Sunday shopping. To some extent you have to admire this kind of blind faith where you just do exactly as you are told, and in the process you stifle the opportunity for information.

It is the absolute indictment of the majority government process where you can come in here and simply vote en bloc, and this is not the first time, the second time or the third time. In all of the committees I have been on, I have watched the performance of the Liberal majority on those committees. Basically, it is a tragedy because I do not think the people of your ridings sent you here simply to be a rubber stamp for some collective thinking. They sent you here to look at issues and to use the good common sense that you probably demonstrated in your communities before arriving at Queen's Park.

The Chair: Thank you.

Mr Farnan: No, I am not finished.

Mr Philip: Marietta Roberts might have some questions.

Mr Farnan: No. Mr Nixon suggested in one of his remarks that it would not be at all productive. I would agree this is not at all productive. This is a farce. This is government gone awry. This is government of insanity. This is a situation where you have a small opposition, and all the opposition is asking for, I want to point out, is the opportunity to have a witness so that information can be provided, so that sensible decisions can be made. But we have got a government that says:

"We don't not want to listen to information. We don't want information because it might be embarrassing. We don't want information because it might upset our plans. We don't want information because opposition parties should not have information. We don't want information because information is power. We keep information to ourselves and we won't share it with anyone else."

This is the kind of government that we have got. You are part of that, and this is very, very sad because the people of Ontario, on 10 September 1987, did not send you here to stifle information and to stifle the opposition's ability to have the facts in order to make a contribution to the decisions that are being made.

What you are doing by your actions today and what you are doing by your actions on an ongoing basis is that you are saying: "We make the decisions. We've got the information. We'll decide what is going to be done. You guys don't have the information and by God we've got the numbers to make sure you never will have the information."

You are part of a cartel to stifle information and discussion. How you can possibly hope to have an atmosphere in the House and in committee where we have some kind of respect, where we work together co-operatively to make good decisions for the people of Ontario when you act consistently in this kind of manner is absolutely beyond me.

1150

Quite frankly, looking at some of the people on this committee who are government members, I am saddened because I know that individually you are good people but you have bowed to the system. You have been caught in the web and you are letting down the people of Ontario by stifling the information in this and in many other issues.

The Chair: Thank you. Could we proceed now with our motion?

Mrs Marland: Recorded vote.

The Chair: Recorded vote.

Mr South: I just want to say what I am voting for today, and it is what I see in the terms of reference here. I think the essential reason for this committee to be is to make recommendations which will strengthen the commission. On the basis of what I have heard here today, that is what I think we are voting on. By calling in this witness or that witness, will it strengthen this commission? As I say, on the basis of what I have heard it will not, so I oppose the resolution.

The Chair: Thank you. We have a request for a recorded vote.

The committee divided on Mrs Marland's motion, which was negatived on the following vote:

Ayes

Farnan, Jackson, Marland, Philip, E.

Nays

Kozyra, Lupusella, Nixon, J. B., Roberts, Smith, E. J., South.

Ayes 4; nays 6.

Mr Philip: If the plutocrats in the Office of the Premier want to dictate this committee, then they can also write the report.

Mrs Marland: Mr Chairman, you said that you had further business to do this morning with this committee. I just want to tell you that I will not be party to what has just taken place. I think we are dealing with something far more serious, unfortunately, than this Liberal government recognizes. I would like to give perhaps as an

example that what we are dealing with is a Dubin inquiry without inviting Ben Johnson.

Frankly, if you get far enough into this you will find that it is not a witchhunt. In fact, it is a matter of friends in high places and people having further friends. I am deeply disappointed with the Liberal members of this committee who choose to have selective memories and I think it is purely a matter of hearing what you want to hear and not hearing what needs to be heard.

Frankly, perhaps subcommittees in the future should also be on Hansard so everybody is protected about what is said and what kind of commitments are made, because for some reason Mr Nixon chooses now not to hear from Mr Anand, and no matter how many times we go over it he is only going to remember what he wants to hear. In fact, there were other meetings, prior to Mr McGarva being on stream, where Mr Anand was also mentioned as someone whom everybody could support hearing from.

I hope that when the committee writes this report it is very clear that it is writing it only on behalf of the Liberal government which chooses, with its tremendous majority, to decide what will be heard and what will not be heard. The truth of the matter is something that this Liberal government obviously does not want to get. Even if the allegations sit out there that have been made, the Liberal government is not interested in finding out whether the allegations are baseless or true. The fact that you will not hold full public hearings is contrary to your own government motion that this take place.

The Chair: I have some further business I want to discuss with the committee if the committee members would like to participate.

Mrs Marland: I am going by what is on the agenda. There is no further business on the agenda.

The Chair: Mrs Marland, I happen to be chairman of the committee, not you, and I was asking the committee for some direction. However, obviously some members do not want to deal with some other matters that are pertinent to the committee.

Miss Roberts: I suggest that it is at your call to have another meeting to put the things on the agenda you wish to do, and we will be available at your call.

The Chair: All it was really was just confirming the previous reports that we had already agreed to in committee. That is really all it was. I wanted it confirmed in the committee, but anyhow, the committee is adjourned for two

weeks. There will be no committee meeting next week.

The committee adjourned at 1155.

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

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Breaugh, Michael J. (Oshawa NDP)

Farnan, Michael (Cambridge NDP)

Fulton, Ed (Scarborough East L)

Kozyra, Taras B. (Port Arthur L)

Lupusella, Tony (Dovercourt L)

Nixon, J. Bradford (York Mills L)

Owen, Bruce (Simcoe Centre L)

Pope, Alan W. (Cochrane South PC)

South, Larry (Frontenac-Addington L)

Substitutions:

Farnan, Michael (Cambridge NDP) for Mr Breaugh

Jackson, Cameron (Burlington South PC) for Mr Pope

Philip, Ed (Etobicoke-Rexdale NDP) for Mr Farnan

Roberts, Marietta L. D. (Elgin L) for Mr Owen

Smith, E. Joan (London South L) for Mr Fulton

Clerk: Brown, Harold**Staff:**McGarva, Bernard, Legal Counsel; with Shibley, Righton and McCutcheon McNaught, Andrew,
Research Officer, Legislative Research Service



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Hansard

Official Report of Debates

Legislative Assembly of Ontario



Standing Committee on Government Agencies
Organization

Second Session, 34th Parliament

Wednesday 6 December 1989

Wednesday 13 December 1989

Wednesday 20 December 1989

Speaker: Honourable Hugh A. Edighoffer
Clerk of the House: Claude L. DesRosiers

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Contents of the proceedings reported in this issue of Hansard appears at the back, together with a list of the members of the committee and other members and witnesses taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday 6 December 1989

The committee met at 1015 in room 228.

ORGANIZATION

The Chair: I will call the standing committee on government agencies to order.

First on our agenda today is the finalization of report 16, and that includes the Royal Ontario Museum Board of Trustees, the Environmental Assessment Advisory Committee, the Review Board for Psychiatric Facilities, the Stadium Corp of Ontario Ltd and the Ontario French Language Services Commission. We had approved this report in camera without the New Democratic Party members here. My understanding is that they have agreed with the report. I have talked to Mr Farnan personally.

Mr Farnan: Having studied the report carefully, I can concur with that.

The Chair: Could we have a motion then to have these adopted and put into printed form for presentation to the Legislature.

Mr J. B. Nixon: I will move it.

Miss Roberts: May I just make one comment? I have not seen them. I know what we said here, but I have not seen the final form. Are we going to see the final form before it does go to the Legislature?

The Chair: The final form is the same as what was seen here.

Miss Roberts: No, they were not. There were changes that were made.

The Chair: There was one deletion.

Clerk of the Committee: If you would like copies of them, I could provide you with those.

Miss Roberts: Thank you.

The Chair: As approved by the committee.

Miss Roberts: May I see them, please?

The Chair: Is there any further discussion?

Motion agreed to.

The Chair: The conclusion with regard to the Ontario Securities Commission and the Ontario Food Terminal Board. I imagine each member got a letter from Ruth Grier, who has shown a very keen interest in this Ontario Food Terminal Board. Maybe what we should do is leave it and the Ontario Securities Commission to the new committee to deal with. I think Mr Wright from the Ontario Securities Commission would like to come before the committee and I think it would be appropriate to have some input from him before the report is finalized. Would that be agreeable to the committee? If it is, then we will deal with that when the new committee members are here.

Next on the agenda is the Ontario Human Rights Commission. We want to deal with the report and we have our solicitor here. I suggest we go in camera and deal with that report at length so that we can have something that we can prepare to present as our recommendations.

Mr J. B. Nixon: Do you want to do item 3 on the record and get that over with or does it matter?

The Chair: We can do that in camera too. We also have a second supplementary budget that we have to discuss too and that can be done in camera as well.

The committee continued in camera at 1018.

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Breagh, Michael J. (Oshawa NDP)

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Roberts, Marietta L. D. (Elgin L) for Mr Owen

Clerk: Brown, Harold**Staff:**

McGarva, Bernard, Legal Counsel; with Shibley, Righton and McCutcheon

McNaught, Andrew, Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday 13 December 1989

The committee met at 1015 in room 228.

ORGANIZATION

The Chair: We call the standing committee on government agencies to order. Our business before us this morning is to try to pick out some agencies and boards that we should be looking at.

I wondered if our research person could bring the members up to date on what regulatory agencies are I, II and III. There are some members who are interested in the differences.

Mr Pond: Harold is handing out right now an outline of the definitions for schedule I, II and III agencies. I think it is pretty self-explanatory.

The Chair: I had requested each caucus to send us a list of boards or commissions that it felt would be appropriate to look at. I distributed a list last week. Tony, do you have a list of agencies, boards or commissions that we could be looking at, or to try to pick out some?

Mr Lupusella: I can offer my own particular interest which can be included into the review, which I would really appreciate. That comes under Education.

The Chair: Could you read them off?

Mr Lupusella: Education Relations Commission, Languages of Instruction Commission of Ontario and Ontario-Regional Special Education Tribunals.

The Chair: Are those the three?

Mr Lupusella: Unless I have a different list. I do not know. Do I have a different list?

The Chair: You have this list here, have you not?

Mr Lupusella: Yes.

The Chair: There are about 100 on there.

Mr Lupusella: It is on the second page.

The Chair: Under which heading?

Mr Lupusella: Under "Education."

The Chair: The Education Relations Commission?

Mr Lupusella: Yes, and Languages of Instruction Commission of Ontario.

The Chair: What was the other one that you had?

Mr Lupusella: Maybe we should go around the members to find out their own specific interests.

The Chair: That is what you were supposed to do before you came here, so that we would have a list and we would know what your five or six agencies, boards or commissions are.

Mr Lupusella: I am suggesting Education. It depends on how many we have to do. How many should go under review? Four, five, six?

The Chair: I was looking at four or five from each party and then we could condense it down and pick out four or five that we would look at over the spring break.

Mr Lupusella: Maybe they have a list. I do not know.

The Chair: Do you have some, Mike? Could we have the list of what you have?

Mr Farnan: Okay. First, the Liquor Licence Board of Ontario under the Ministry of Consumer and Commercial Relations. I do not know if there are boards dealing with the two areas, but I would also like the following areas, if there are boards dealing with them: apprenticeship and skills development and substance abuse rehabilitation.

The Chair: Which is that under?

Mr Farnan: I do not know. These are topic areas. Is there a board that deals with apprenticeship and skills development and is there a board that deals with substance abuse rehabilitation? If there are, then they are the boards I would like to see.

The Chair: Apprenticeship and tradesmen's provincial advisory committees is under the Ministry of Skills Development. We will write that one down.

Mr Farnan: I have had problems locating a board dealing with substance abuse rehabilitation. I know it is a very important—

Mr Fulton: It is the Addiction Research Foundation.

Mr Farnan: Is that a board that comes under this agency?

Mr Fulton: Yes. It has been examined here on a number of occasions in the past.

Mr Farnan: Given the context of the government's initiative in this area, I think it might be a valuable board to look at.

Mr Fulton: It was last done in 1984. That was the last record we have of addiction research being brought before the committee. I think it was 1984 when ARF was last before this committee.

The Chair: Yes. We have a list of when a lot of these were reviewed. Probably a lot of people have not got that.

Mr Farnan: Of course, the government's initiative was certainly not in the works at that stage.

The Chair: What we will do is get a list of what everybody is proposing and then we will try and break it down, find out when they were done last or if they have been done. Then we can find out where it sits and if the committee wants to do it again, we can do that. So if we get the lists—you have three: the Liquor Licence Board of Ontario, apprentice skills development and the Addiction Research Foundation, right?

Mr Farnan: Yes.

The Chair: Do you have any more?

Mr Lupusella: I have the Ministry of Colleges and Universities and Education on the second page.

Mr Owen: Which ones?

Mr Lupusella: Education Relations Commission and Languages of Instruction Commission of Ontario.

The Chair: Yes, we have that.

Mr Owen: Did you have something under Colleges and Universities specifically?

Mr Lupusella: Ontario Student Assistance Program Appeal Board and also Private Vocational School Review Board.

The Chair: Do you all have a copy of the list that I had made?

Mr Owen: From this regulatory list?

The Chair: No, just that one there.

Mr J. B. Nixon: Yes.

Mr Owen: I do not.

The Chair: Do you have a copy of that?

Mr Farnan: In the office, but I do not mind if you want to give me another one.

The Chair: We will make some.

Mr Farnan: Can we throw in another one?

The Chair: Yes.

Mr Owen: Somebody will get something, and there is such an overlap of this committee's structure that we have not all gotten it.

1030

The Chair: It was all sent to the offices, but we will write it down and when we make a copy of it, we will make a copy of what we wrote in and what was on my list. Then everybody will have it in front of them, so that we can take them off, what we do not want to deal with.

Social Assistance Review Board—did somebody give me that? Alan Pope did. I know we have done that before.

Mr Lupusella: Will you please explain the difference between the two lists which are before us, the appendix of Ontario agencies and this list?

The Chair: This list here has got approximately 100 on it. This is the one that Mr Elston had appointed Mr Macaulay to prepare, a condensed list of the regulatory 1 agencies. These are the ones that he felt were most important, that short list. That is where I picked my list out of.

Mr Lupusella: Because many members are new to this committee and we did not have the opportunity to review the Macaulay report, I think it is appropriate that the members at least would be briefed in relation to the content of such a report in order that the review of certain boards and agencies before this committee can be better evaluated and so that at least we can make better recommendations when we are going to draft a report.

Mr Fulton: We would like to pick up from the Macaulay report, which contains this 100 or so as you have indicated, plus a number of other agencies, with a view to seeing where in fact we can reduce or eliminate some perhaps redundant boards, commissions or agencies as one of our submitted priorities.

Depending on time—I do not know how we are going to allocate it; I understand we have three weeks in the spring and perhaps three weeks later on—we would like to do a couple from each of the opposition parties and to have then equal time remaining to pursue the review of the Macaulay report and others, and perhaps a couple of other agencies yet to be determined.

The Chair: That has been the process that this committee had followed for many years, to try to pick out a few that it thought could be sunsetted, that were redundant. My understanding is that is Macaulay's key job, to try to point out to the minister ones that he feels should be sunsetted, so to speak. That is what I understood his job was to be. When he came before us, he made quite a major presentation. You know how he talks on and on. Anyhow, this is the list that he had come up with, the ones that he felt we should be looking at immediately.

Mr Fulton: Looking at it with the view to terminating or sunseting them or just reviewing them on a regular basis?

The Chair: Just reviewing them.

Mr Fulton: But he has not made any recommendation that certain boards could be eliminated or phased out this year or next year and so on.

The Chair: No.

Mr Fulton: But there must be some.

The Chair: We think that all the time, but I do not think there has been one yet that we have—was it the farm tribunal or some drainage tribunal or something that we had recommended it be sunsetted and it never was? So I have been of the opinion we might as well try to look at the ones that we think are of the most interest to the people, do a review on them, make our recommendations and hope that we could have some improvement. However, it is the wish of the committee.

Mr Lupusella: My concern is that we have so many boards and agencies across the province of Ontario which are influencing the life of people in one way or another. If we as a committee maintain that certain boards do not have a purpose to perpetrate their work in our society, they should not be there in the first place. It is the duty of this committee to clean up a little bit what is redundant.

The Chair: That is why the minister asked Mr Macaulay to do a review of them all. There are some 800 agencies, boards and commissions in the province and we deal with about five or six in a year. So if you think that you could pick out of those 800 two or three that you can sunset, then I would be pleased to hear about it. But that is why the minister appointed Mr Macaulay, to try to get rid of a bunch of them. He has more time to do an in-depth study than we will ever have. We will only have a few hours. So it is up to the committee how it wants to handle it.

Mike, did you have something you wanted to say there a minute ago?

Mr Farnan: No, I think we have got the general direction. The time of the committee is limited, so the scope of our work has to be focused. My only concern is that we do not get into the trap of saying, "We did these agencies five years ago; therefore they have had their turn and don't come up again."

In my view, we have to be looking at some of the key problems in our society and some of the agencies that are affecting those areas. That is why, for example, I talked about apprenticeship

and skills development and the substance abuse rehabilitation. I think these are critical areas. Obviously other members, other caucuses will have what they perceive as critical areas, but the task of reviewing is so great that we have to be selective. The criterion I would judge by is the impact that the agency has on our society at the present time. They are the kinds of agencies I would want to review, to better understand and to see what direction they are taking.

Mr Fulton: I hope that offering information that the one committee that got mentioned was here in 1984 is by no means suggesting it not be brought back.

Mr Farnan: No, I understand that.

Mr Fulton: I support what you are proposing.

The Chair: We have copies being made of what has been proposed, so when those copies come back we will deal with them.

Mr Kozyra: To provide a personal focus on what has been proposed already, let me say that I endorse Mr Farnan's selections, especially focusing on apprenticeship and the Addiction Research Foundation, as they relate to drug abuse and controls because they are immediate problems and concerns. As well, there is a sense of immediacy in terms of what is happening or what has happened with other committees, legislation and so on. I think it makes a lot of sense.

In the case of those you proposed, Mr Chairman, I would wholeheartedly endorse the Custody Review Board and Ontario's Board of Parole for the same types of reasons. They have an immediacy in terms of things that have been happening and I think it would be very timely to do so. That would be my start in endorsing those four—two and two.

The Chair: That may be a focus that we could work on, in the drug line, addiction, and do the parole and all the ones that are pertaining to that.

Mr Kozyra: Yes.

The Chair: That may be a good idea. However, when we get the list back, we can pick off the ones that we would like to have our research people start to work on.

Mr Pond: Would you like a memo from us on the Macaulay report, a three- or four-page memo summarizing its conclusions and analysis? I have read it once. It is a massive report.

The Chair: Is this the one here?

Mr Pond: That is before.

Mr McNaught: Yes, that is before.

Mr Pond: It was released in July or August 1989, and that is an old memo.

The Chair: I think that the members should have a copy of that report. The clerk informs me that all members of the Legislature received a copy of the Macaulay report.

Clerk of the Committee: Now, I understand that some have been lost.

The Chair: There could be some that have been misplaced. Maybe the staff filed it for you, Tony.

Mr Lupusella: It must be in my office for sure, but in view of the fact—

Mr Fulton: My defence is that I moved twice in the last while and we really cannot find it, along with some paintings I have lost.

Mr Lupusella: But considering that I did not have the agenda, which was supposed to be before us, I am not aware that I ever received such a report. I might be wrong, but—

Clerk of the Committee: That is just the information I was told because I tried to get copies for the members of the committee. I was told that, "Well, all MPPs have received their copy."

Mr Lupusella: Maybe I did, and I do not want to deny that.

Clerk of the Committee: Well, I will see if I can get some extra copies, specifically.

1040

The Chair: While we are waiting for the report to be printed, I am bringing you up to date on Monday night. Harold and I met with the Board of Internal Economy to present our budget for the next three months.

We had applied for approximately three weeks of sitting here. If the House leaders deem it appropriate to give us those three weeks, fine. They may give us two, we do not know. But we have applied for that, plus we have applied for the other \$6,000 that our legal counsel on the Ontario Human Rights Commission anticipated he would need to finalize the report.

We made our presentation. They asked us if we had planned on travelling and I said that we had not budgeted for any. It was a disappointment, I know, to the members, but the clerk did not include that in the budget because there had really been no discussion on whether we really wanted to do any travelling or not nor whether it was necessary. So we just have a bare-minimum budget until the end of March.

Mr J. B. Nixon: The summer session.

The Chair: That is right. And the board indicated that it would look at it and get back to us in due course to let us know whether it would approve it or not, which I am sure it will.

Mr Owen: I notice that most, probably all, of the suggested agencies for consideration are regulatory agencies. Do we ever look at operational agencies? Is it because they do not have quite the input that we think we should be concentrating on regulatory?

The Chair: Well, if there is some that the committee feels strongly that we should be looking at, certainly we could look at them.

Mr Owen: I have some concern for the Ontario Historical Studies Series Board of Trustees, which is an operational agency, particularly since we are approaching the heritage years. I would just like to see what direction this series is taking. I know that they have a volume coming out on former Premier Mitch Hepburn, but I am concerned about whether they are adequately funded for what we are about to go into in terms of 1991, 1992, 1993, and whether they have captured the imagination and thrust of what could be available to them and to the province.

The Chair: I guess our duty is to look at the board or agency or commission to see if it is functioning properly, if there is recommendation that we could make to it. I guess with regard to the funding, the Ministry of Citizenship and Culture would—

Mr Owen: Or whether they are using their resources that they have now as well as they should.

The Chair: Yes. That is a fair question.

Okay, where should we start? Where would you like to start? If you want to work on the theme of drug addiction, then you look at alcohol, the Liquor Licence Board of Ontario, drug addiction. You can look at the custody review and Ontario Board of Parole.

Mr Farnan: If I may help to clarify the situation as to where my caucus would come from in making our pitch, my number one priority would be apprenticeship and skills development. That is what we see as a very critical area in terms of the competitiveness of Ontario for the next century. While we would endorse the whole idea of substance abuse rehabilitation, I would like to go on record, if possible, that there could be a consensus around the issue of apprenticeship and skills development.

The Chair: What I would like to do now is to try and get it down to two from each party. Yours is apprenticeship and skills development. What is your other one?

Mr Farnan: Basically, I think it is a toss-up, but we will go with substance abuse rehabilitation.

The Chair: Alcohol and drug addiction.

Mr Farnan: That is the same one, alcohol and drug addiction.

The Chair: Okay. What two would you have that you would think would be most appropriate?

Mr Lupusella: The Ministry of Colleges and Universities for me, and the Ministry of Education, which are specified under—

The Chair: That is the languages of instruction; is that the one?

Mr Lupusella: The Languages of Instruction Commission of Ontario, and under the Ministry of Colleges and Universities, the Ontario Student Assistance Program Appeal Board and the College Relations Commission.

The Chair: So the one is languages of instruction. What is the other one?

Mr Kozyra: OSAP, the Ontario Student Assistance Program Appeal Board.

The Chair: Okay.

Mr Kozyra: I think that should be number one.

Mr Owen: His third was the—

Mr Lupusella: College Relations Commission.

Mr Kozyra: If I may suggest then, piggybacking on what Mr Lupusella said, in priority ranking, I would plug for OSAP, the Ontario Student Assistance program. It deals with hundreds of thousands of applications and in there are a considerable number of complications, let's say, rather than problems. I think that whole process could stand reviewing.

The Chair: Okay, so that is the Ontario Student Assistance program.

Mr Kozyra: That would be my first choice.

The Chair: Appeal board, or what is it?

Clerk of the Committee: Ontario Student Assistance Program Appeal Board.

The Chair: All right. I would like to see the Ontario Board of Parole. Does anybody know anything about that? I do not know and I would like to maybe look at it.

Mr Lupusella: Yes.

The Chair: The Custody Review Board. What is that?

Mr Lupusella: "Custody;" it has to do with children, social assistance program.

Mr Fulton: Would that include the provincial guardian's office?

Mr Lupusella: I think so.

The Chair: It is under the Ministry of Community and Social Services.

Mr Kozyra: So that's your one and two.

The Chair: The Social Assistance Review Board is under the same ministry, Community and Social Services. What about the Workers' Compensation Appeals Tribunal? It looks like an interesting one.

Mr Lupusella: Yes. That is included with that as well, Ministry of Labour.

The Chair: I know the whole of workers' compensation was looked at, because I was on the committee when we did it.

Mr Owen: I thought it was done not too long ago.

Mr Fulton: I do not see it on the list.

Mr Owen: If not, it should be there.

The Chair: Criminal Injuries Compensation Board—that was, I guess, in 1983. That might be a good one, the appeals tribunal.

Mr Kozyra: That makes seven.

The Chair: Okay, what seven have you got?

Clerk of the Committee: I have the Ontario Board of Parole, the Workers' Compensation Appeals Tribunal, the Languages of Instruction Commission of Ontario, the Ontario Student Assistance Program Appeal Board, the College Relations Commission, the apprenticeship and tradesmen's provincial advisory committee and the Alcoholism and Drug Addiction Research Foundation.

1050

The Chair: That probably seems like enough.

Mr Farnan: Could I ask a question? On this list that you just distributed, on the third page from the back at the very bottom of the page under Skills Development, it lists apprenticeship and tradesmen's provincial advisory committee, which is the one I think we have earmarked, what is the difference between that particular agency and the Ontario Training Corp?

Mr Pond: Advisory committees are just groups which meet irregularly to advise a particular ministry. They do not have any policy responsibilities.

Mr Farnan: Okay.

Mr Pond: That is what the advisory committees are.

Mr Farnan: And the Ontario Training Corp is?

Mr Pond: An actual operational agency. Harold has the CV for it.

Clerk of the Committee: On a quick look, I do not see either of those shown in the KWIC Index here, actually, under Skills Development.

Mr Farnan: Okay. The reason I raised the issue is, if one is an advisory group and one is an operational group, I am not sure it would not be beneficial for us to look at the two of them in conjunction. If we were taking the whole area of apprenticeship and skills development and training as an area that we, as a committee, wanted to look at, rather than pick out one of them and say, "Look, this is the advisory group," and two years later look at the operational group, that perhaps does not make a lot of sense.

I would be prepared to drop our second option out on the basis that we were to look at apprenticeship and skills development in a more total manner and perhaps look at these two agencies.

However, I have to say I am making this suggestion based on a considerable degree of ignorance. I do not know what these agencies are or what they do, and I would like to think that there was something very substantive that we can get into so that this committee might, in effect, have some impact on apprenticeship and skills development by bringing these two agencies forward to this committee. Maybe there is a little bit of research to be done.

The Chair: If I could make a suggestion, I see no problem with adding it to the list as it is, because it may so happen that there would be one or two that we have on there that we have a problem getting to the committee in the first session, maybe due to the fact of the research, or there could be some problems. So, I see no problem with just adding it to the list. We may be able to do the two of them within one or two days of one another.

Mr Farnan: It is the Ontario Training Corp that is the operational agency, but I think it makes a lot of sense that if the government has an advisory and an operational group, we should look at both of them together. That way, we can conduct it in the most positive light.

The Chair: Okay, so we have then a total of eight.

Mr Lupusella: Under the Ministry of Health, there is one item which I do not understand, the Chiropractic Review Committee. I know the meaning, but what is the function of this committee? It is the study of the feet, if I recall properly.

Mr Fulton: I have nine indicated from what the clerk read out, counting the addition from Mr. Farnan.

The Chair: Let's read them out, because if we are going to get up into these eight and nine numbers, we are going to have to have our priorities.

Clerk of the Committee: Ontario Board of Parole, Workers' Compensation Appeals Tribunal, Languages of Instruction Commission of Ontario, Ontario Student Assistance Program Appeal Board, College Relations Commission, apprenticeship and tradesmen's provincial advisory committee, Alcoholism and Drug Addiction Research Foundation, Ontario Training Corp.

The Chair: That is eight.

Mr Fulton: What happened to the Custody Review Board that the chairman asked about?

The Chair: The which?

Mr Fulton: The Custody Review Board that you had submitted. I had that indicated as one of your three priorities.

The Chair: Yes, I indicated it, but I do not know what it is.

Mr Fulton: That is why we are here.

The Chair: I guess if we are going to deal with the Ontario Board of Parole, maybe we had better be putting the Custody Review Board in.

Mr Kozyra: That makes three apiece.

The Chair: Yes, that makes three apiece. Put the custody review board in and then we will do our priorities.

Mr Fulton: All right, but what seems to be getting lost then is what we started with, and that is an attempt to review the previous report from Mr Macaulay, with the overall attempt by this committee to either address his 100 and find something that can be sunsetted or indeed some of the other 700 that you have indicated are out there.

There has to be some time to see what is redundant, because we both know there are redundant agencies out there somewhere. I think we have that ongoing responsibility to try to drop some of these things off on an annual basis, if we can possibly do it. I think we have to put some effort into that.

The Chair: I am sure that most ministries are going to have to get back to Macaulay to indicate to them which ones they probably feel—

Mr Fulton: We may have a role to play in doing that.

The Chair: Yes.

Mr Farnan: I know what my colleague is saying, but I honestly do not believe that this committee is in any shape to have a substantive role in deciding which agencies should be dropped, unless it would happen to be an agency that appears before the committee and we are dealing with it in a certain amount of depth.

This committee has a very limited amount of time in which to do its work. I know that with my work, the amount of time I can devote to this committee is limited. It is certainly not the amount of time in which I could make informed judgements as to whether there are 100 agencies out there that need to be lopped off.

I think if that process is to continue, the Macaulay report has given a direction, but I think it is up to individual ministers and ministries to examine their particular area and then perhaps bring forward a recommendation. But I can't see this committee, unless—you know, you are looking at three weeks of hearings, a couple of hours, four or five hours a day, and that is not the kind of time frame and it is not the kind of energy that is required for the type of work that has been suggested in deleting committees.

The Chair: I would like to make a comment, for the new members' information more than anything.

There are two commissions that we have been looking at, and those are the Ontario Food Terminal, which is not completed yet, and the Ontario Securities Commission. Now, we have done a lot of time on both of them. I am sure we would like to have Mr Wright, who now is the new head of the Ontario Securities Commission, before our committee, and I know that he would like to be able to come before the committee to give us some direction on the changes that have been made there since Mr Beck is no longer there.

We are getting near the finalization of the report, but I thought it would be appropriate to have them in. I also thought would be appropriate to have perhaps some of the board members back with regard to the Ontario Food Terminal. I would advise you, if you get the opportunity, to read some of the Hansards that took place with regard to those two.

We visited the food terminal and did an extensive study. Mrs Grier raised many issues on

that on many occasions with regard to the perpetual leases that are there and the millions of dollars that change hands. Those are two that I would like to clear up when the committee comes back to deal with them. I think it may take a couple of days to do that, so that is going to cut into our time here, but it is something that must be done. It has gone on too long.

1100

Mr Kozyra: I want to propose a kind of compromise between what Mr Farnan has said about the limited time, acknowledging that that is the case, and Mr Fulton's suggestion that we look at these and at the sunset ones with a view to perhaps reducing the number. I think a good place to start here would be to ask each ministry for an update on its own review of the boards and commissions that come under its control in relation to Mr Macaulay's report and recommendations.

I think it falls within our mandate to ask the ministries to give us an update as to what they have initiated in relation to the report, and that will be a place to start then for us to see what they are doing. Perhaps from that statement from each, we could then have some indication and determine where we want to plug in after that. But we will have them do the work in condensing for us what is going on and keeping us informed as well.

Mr Fulton: I certainly appreciate and understand the time restraints as indicated by Mr Farnan, and I suspect even those that we have agreed to deal with in this committee are probably unrealistic in fact, that we will not in any meaningful way get into all of them even with six weeks.

I think one of the important roles of this committee has got to be that ongoing review. Otherwise, the Macaulay report really was of little value if we do not pick up on it. While we may be limited to five or six or seven weeks of sitting here, surely there are other areas and responsibilities and ways that we could approach the end objective, which I firmly believe is to not continually perpetuate the system. We have to take a look at getting rid of some of these redundancies. I do not think we are limited in any way to the time we spend sitting here looking at each other, to effect that end result.

Mr Farnan: I would like to respond. I think we are speaking about the same thing, but it is a matter of getting the right handle on it.

First of all, I like Mr Kozyra's suggestion of going back to the ministry. That is the right direction because, ultimately, it is ministerial

responsibility for the committees that exist; it is not all-party position as to what committees exist, although we can make recommendations.

A report has come down which says that there are too many or that there are possibly a significant number of committees that may not be needed out there. The reality of the matter is that it is the minister responsible for the particular ministry who must make the hardball decisions and must examine the committees through his ministry staff and make those tough decisions, because we are talking about hundreds of committees and we are actually going to deal with maybe five or six of them in our six-week period between now and next September.

So really, there is a big job to be done out there and it belongs to the ministers and the ministries. Our job in this committee, as I see it, is to look at areas that are of significance, talk to committees that are significant and hopefully be helpful in making suggestions for a more effective agency or committee operation. That is a big enough job, and for this committee to go on an expansionist direction of saying that we will be the arbiter or the decision-maker as to what committees exist or do not exist, I do not think that is the reality.

I think if a committee comes before us or we call a committee before us that is obviously not needed, then we can make that decision. But I think that we should be saying to the minister, "Do your review internally and if you wish"—I do not think the minister has to come back to this committee to kill off an agency or a board. I think that is internal—correct me if I am wrong, Mr Fulton, you would have this knowledge, but I think the minister can decide that that agency or that board is no longer necessary.

I think that is where the decision should lie and I think it is highly unproductive for us to get into the whole area of thinking that we can be the agency of reform that will wipe out literally hundreds of committees in the province.

The Chair: Okay. On our agenda this morning, we were trying to pick out the agencies that we are looking to review. I think we have done a good job. We have got nine of them. Could I have a motion that these nine agencies that we have recommended be the ones that this committee will deal with over the next year and we will proceed on that basis? Is that agreed?

Agreed to.

Mr Fulton: I think there has to be on record, since there is a motion to adopt these nine as our goal, that there has to be a footnote or an amendment that we will also consider—I do not think there is any disagreement at all between Mr

Farnan and ourselves as to what the objective is, realizing we are not going to abolish a whole pile of things, but we have some responsibility. Whether it is through the Macaulay report or individual or collective efforts with respect to ministries, you are right, you are correct, that we should be doing that. Now, whether we do it sitting here or we do it elsewhere, I would like to maintain that on the record as one of our objectives.

The Chair: I think that is a fair comment.

Mr Lupusella: I want to be on the record that the structures of these boards and commissions are influencing the lives of citizens across the province of Ontario on a daily basis. Their infrastructure sometimes is complicated by principles of bureaucracy which people are encountering to get to certain benefits and to get at the final review coming from these boards and agencies.

To bring to your attention, Mr Chairman, for example, the issue of the Workers' Compensation Board, imagine an individual, to reach the independent appeals tribunal, has to go to so many doctors, be visited by so many specialists, to be called by the WCB for an assessment. Then if he loses the appeal, he has another remedy, which is the independent appeals tribunal.

The Chair: Well, when we get into dealing with the Workers' Compensation Appeals Tribunal—

Mr Lupusella: I understand. The point I would like to bring to your attention is that there is no immediate remedy for people who are seeking certain justice in our society to get to one person who has an overall review of these boards and agencies because an injustice has been committed. I think that the direction of this committee must be towards the goal of establishing a commissioner where people, if they find an injustice is committed by these boards, can write to this commissioner and the commissioner can investigate and review the complaint.

The Chair: I guess that is why we have the human rights commissioner and we have the Ombudsman to deal with those things.

Mr Lupusella: Well, that is the problem.

The Chair: I will ask our researcher to explain or expand on what has been discussed.

Mr Pond: I am the new research officer. My name is David Pond. I will be attached to this committee in January. Andrew is moving on to another committee.

Since 1980, pursuant to an order in council passed by the Davis government, there is an

internal sunset process within the Ontario government whereby every three years all agencies, boards and commissions have to undergo extensive review and the results are reported to the Management Board secretariat. If the committee likes, I can do a brief memo, outlining that process.

Mr Macaulay recommended that that internal sunset review process be strengthened and he suggested that the committees of the Legislature look at it. There have been some agencies, boards and commissions that have been sunsetted on a regular basis since 1980 within the Ontario government, so it does go on.

The Chair: By the ministries?

Mr Pond: It is conducted internally by the ministries themselves.

Second, we can do a memo summarizing the Macaulay commission report for the committee, if you like.

Mr Farnan: Is there any value in this committee writing to the various ministers and simply asking the ministers what committees—I know this is a bit potentially explosive—agencies they would consider for sunsetting?

The Chair: I think from what he has just told us, and listening to you, we had better get the material, review it and determine then at our next meeting what avenue we should take.

1110

Mr Lupusella: How thick is this report? How many pages?

Mr Pond: The Macaulay report?

Mr Lupusella: Yes.

Mr Pond: It is over 500 pages. That is why I suggested that we could do a memo for you.

Mr Farnan: Does that process answer Mr Fulton's concern? That is probably the question.

The Chair: We have not seen the material yet.

Mr J. B. Nixon: Can I just make a comment? I understand where you are going and I agree with the theme and with what Mr Fulton said too. But really, as a committee, I think we should be making a decision.

If we write to the ministers and ask them what that they want done, my question would be, and I think the question you would be more interested in than myself, who is running the committee, the committee or the ministers? They are not going to get—

Mr Farnan: I do not think you were here for the debate that we had on this.

Mr J. B. Nixon: Mr Fulton filled me in.

Mr Farnan: Well, he did not fill you in quite correctly. Let me just suggest to you that the essence of the debate was, where does responsibility lie?

Mr J. B. Nixon: Oh, I know.

Mr Farnan: Responsibility lies with the minister, and if Macaulay says there are hundreds of agencies out there that perhaps should be sunsetted, then I think this committee should be saying to the various ministers: "Macaulay has brought in his report. You are in the best position and ultimately you have to carry the can."

Now, if in the course of our work we come across an agency or a board that we want to make a recommendation about to the minister for sunsetting, that is part of the process, but the reality of the matter is, I think, the Macaulay report speaks to the minister and his ministry and not to this particular committee. We can get caught up in that Macaulay report by thinking that we are the agent of change, but this little committee cannot be responsible for 800 government boards and agencies.

Mr J. B. Nixon: Can I just make a quick reply? You were not here for Macaulay's presentation. One of the points Macaulay made when he was here was that this committee should take on more supervisory responsibility than it may have had in the past on those types of issues.

If we are going to follow that area of examination, I think we should be doing our own investigation. It is one thing to ask them what they have done about Macaulay's report, but it is another thing to ask them which ones they are recommending for sunsetting. I do not think we should be asking them that or relying on them for that.

Mr Farnan: Well, I do not think we should be asking. I think the ministers have a responsibility to do that.

Mr J. B. Nixon: Yes.

Mr Farnan: But just the very phrasing of your words, that we should be doing more investigating, it just is not possible.

Mr J. B. Nixon: Sure it is.

Mr Farnan: No. It just is not possible given six weeks of hearings and 800—

Mr Fulton: You are spending far too much time in preparation for question period. That is your mistake.

Mr Farnan: No. Basically, we have 700 or 800 government agencies and boards. Macaulay is saying there are 200 of them, perhaps up to 200, that can be sunsetted and we have six weeks

where we have four days with five hours a day to do our work. You have to be out of your mind to think that we can be an investigative agency. We can be a group that meets with individual agencies on specific issues and hopefully make suggestions for individual agencies, but I do not think we can be more than that.

Mr J. B. Nixon: I resent the member's allegation that I am out of my mind.

The Chair: I think the key of the Macaulay report was that he wanted us to do more work, that he wanted the Legislature to give us more responsibility and to look into far more agencies than what we are doing now. That was the essence of his report.

Mr Fulton: I do not think there is any question about the status of my friend's mind.

I have no question and I do not think anyone here has any doubt about ministerial responsibility. I understand that, but there is nothing out of our terms of reference to assist and take the initiative to help the minister make a decision.

If we can do that, I happen to think that a backbencher's key role is the work he does in committee. I do not think we can be limited by simply three weeks in February and three weeks in the summer as being the responsibility of this committee. If we can do other things during the year, we have that obligation.

Mr Farnan: I think you are going to have to look at the realities of the House, because the realities of the House are that there are 19 New Democrats and there are 16 Conservatives. We do not have the luxury to man five committees meeting every day in the same way as the government with its 94 members can. There are practical realities as to just the everyday workings of the House and—

Mr Fulton: Oh, I understand that, but that does not in any way abolish the responsibilities of the committee.

Mr Farnan: Of course it affects—

Mr Fulton: It affects them but it does not take away our responsibility.

Mr Farnan: Nobody is questioning that. I think the important thing that I want to say before this record is closed—I am not arguing the fact that this committee has not an important role to play; I am not arguing the fact that it cannot assist the minister and it cannot assist the various

agencies and boards—all I am saying is that unless there is a serious restructuring of the present structure of this committee, the present makeup of this committee and the present time allocations and budgets for this committee, it cannot undertake any kind of work.

Certainly, in my view, while the Macaulay report may say this committee should check into more agencies, we are not going to check into the 800 agencies and find the 200 that have to be sunsetted. That is going to have to be a very important task that the ministers undertake, and if they do not undertake it, nobody else will undertake it. The responsibility will ultimately have to be carried by the ministers and the government if those useless agencies and boards continue to exist.

Mr J. B. Nixon: Can I just finish? No one is disagreeing with you. I do not know why you have to get off on this rant about it. No one is disagreeing with you. The ministers have responsibility and will always have the responsibility. All I was suggesting is how we approach them and work as a committee. That is all. Do not worry.

The Chair: Okay. That is fine.

I know the procedure around here. You are not allowed to correct anybody else's record. That is a legislative rule. But I do want to correct the record of what Mr Farnan has said, and it is very important that he should know that there are 17 Conservatives not 16.

Mr Kozyra: We knew that.

The Chair: I know I do act like a Liberal sometimes, but anyhow, we have had the motion with regard to the nine agencies that we are going to be looking at and the clerk and I and our research people will try to get them into groups where they will try to coincide with one another. We are in agreement with those nine, are we not?

Agreed to.

The Chair: This committee adjourns now until next week at 10 o'clock. I would hope that we could have those reports from the Ontario Human Rights Commission, so that we can finalize some of that work. However, you will get a notice with regard to the meeting.

The committee adjourned at 1120.

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STANDING COMMITTEE ON GOVERNMENT AGENCIES**Chair:** McLean, Allan K. (Simcoe East PC)**Vice-Chair:** Marland, Margaret (Mississauga South PC)

Breauagh, Michael J. (Oshawa NDP)

Farnan, Michael (Cambridge NDP)

Fulton, Ed (Scarborough East L)

Kozyra, Taras B. (Port Arthur L)

Lupusella, Tony (Dovercourt L)

Nixon, J. Bradford (York Mills L)

Owen, Bruce (Simcoe Centre L)

Pope, Alan W. (Cochrane South PC)

South, Larry (Frontenac-Addington L)

Clerk: Brown, Harold**Staff:**

McNaught, Andrew, Research Officer, Legislative Research Service

Pond, David, Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday 20 December 1989

The committee met at 1550 in room 228.

ORGANIZATION

The Chair: I call the committee to order. I have a letter here addressed to Harold Brown, the clerk of the standing committee on government agencies. Harold is not here today, but it says:

"I hereby submit my resignation as chair of the standing committee on government agencies, to be effective as of 1 January 1990. I have enjoyed my tenure as chair and I thank you and the committee members for your co-operation."

I do not know whether the clerk has a letter here about the resignation of the vice-chairman?

Clerk pro tem: Yes, I do. I have also received a letter from Mrs Marland and I will read it into the record, if I may.

"Please accept this letter as my resignation from the position of vice-chair of the standing committee on government agencies. As you know, I have been appointed deputy House leader of the Progressive Conservative caucus. The demands of my new position are such that I will be unable to devote sufficient time to the government agencies committee.

"I have enjoyed my work with the committee. May I take this opportunity to wish you and the committee members the best for your work in the new year."

The Chair: We do not need a motion to accept these?

An hon member: Are they effective the same day?

Clerk pro tem: I read it as being accepted.

The Chair: Thank you. I will vacate the chair.

Clerk pro tem: It is my duty to inform you that we no longer have a chairman and request that you nominate one of your members as the chairman. I open the floor for a nomination for a new chair.

Mr McLean: I will move that Norm Sterling be chairman of the committee.

Clerk pro tem: Any other nominations? There being no further nominations, I call upon Mr Sterling to come and sit on the chair as the new chairman of the committee.

The Chair: I think we should have a vice-chairman of the committee. I would like to open nominations for vice-chairman.

Mr Breaugh: Could I nominate Mr McLean?

The Chair: Mr McLean has been nominated. Any other nominations?

Clerk pro tem: Mr McLean is the new vice-chairman of the committee.

Mr McLean: Thank you.

The Chair: Congratulations.

Mr Breaugh: Another tough campaign.

The Chair: Have we got any other business?

Clerk pro tem: Yes. My understanding is that you are to form a subcommittee so that you may work in private to establish the agenda in the upcoming weeks.

The Chair: Do you have a motion, Mr McLean?

Mr McLean: We have to have names for the people who are going to be on the subcommittee. I move Michael Breaugh from the New Democratic Party.

Mr Breaugh: Maybe we would put Ed Philip in there.

Mr McLean: Ed is on the committee?

Mr Breaugh: Yes.

Mr McLean: Okay, and who do wish from our party, Mr Chair, myself?

The Chair: Yes.

Mr McLean: And from the Liberal Party? Interjections.

Mr McLean: Tony Lupusella.

The Chair: Mr McLean moves that Ed Philip, Allan McLean and Tony Lupusella do compose the business subcommittee and that the said business subcommittee meet from time to time at the call of the chair to consider and report to the committee on the business of the committee; that substitution be permitted on the business subcommittee; and that the presence of all members of the subcommittee is necessary to constitute a meeting.

Motion agreed to.

Mr Lupusella: If I may, I would like to express my own position that no decision can be made unless the committee at large is going to vote on any particular motion from the subcommittee.

Clerk pro tem: That is under the standing order 123. This is a separate subcommittee.

on this committee; I am sorry. Any other business? Thank you.

The Chair: Oh, of course, we do not have that

The committee adjourned at 1557.

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

Chair: Sterling, Norman W. (Carleton PC)**Vice-Chair:** McLean, Allan K. (Simcoe East PC)

Breaugh, Michael J. (Oshawa NDP)

Farnan, Michael (Cambridge NDP)

Fulton, Ed (Scarborough East L)

Kozyra, Taras B. (Port Arthur L)

Lupusella, Tony (Dovercourt L)

Nixon, J. Bradford (York Mills L)

Owen, Bruce (Simcoe Centre L)

Pope, Alan W. (Cochrane South PC)

South, Larry (Frontenac-Addington L)

Substitutions:

Smith, E. Joan (London South L) for Mr Owen

Tatham, Charlie (Oxford L) for Mr J. B. Nixon

Clerk: Brown, Harold**Clerk pro tem:** Carrozza, Franco



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Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on Government Agencies

Agency Review: College Relations Commission

Second Session, 34th Parliament

Monday 19 February 1990

Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

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Contents of the proceedings reported in this issue of Hansard appears at the back, together with a list of the members of the committee and other members and witnesses taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Monday 19 February 1990

The committee met at 1503 in room 228.

AGENCY REVIEW: COLLEGE RELATIONS COMMISSION

The Chair: I think we will start now, ladies and gentlemen. I would like to welcome you to the standing committee on government agencies. I am happy to see the five of you here today to take us through what you are experiencing with your agency. I hope that the committee has some good questions for you after you have completed your opening submission, which I understand you would like to make. Perhaps I will ask the chairman, Professor Swinton, to introduce the members of the delegation and make the presentation.

Ms Swinton: I will start with David Hayes, the vice-chair of the commission; Robert Saunders, the chief executive officer; Dr Ed Aim, the director of field services; and Sharon McElroy, the director of information services.

We are very pleased to be asked to attend the standing committee on government agencies this afternoon. We understand that we are among the first agencies appearing this session and we hope that we can help you in your deliberations.

I understand you have a briefing paper that Mr Pond prepared. It seems to give an excellent overview of the commission and its history. All we thought we would do in this opening statement is provide a little clarification of some points that we thought might be of interest.

I think there are about three points that I will go through in this opening statement. We feel that the College Relations Commission, which you are looking at today, cannot be understood without some knowledge of its relationship with the Education Relations Commission, so I will be speaking more about that.

Second, we will be discussing our legislation, the Colleges Collective Bargaining Act, its origins, how it works and an outline of how it differs from the School Boards and Teachers Collective Negotiations Act, which is the legislation under which the Education Relations Commission operates.

Third, I will be speaking about our role as a commission in administering the legislation and the process used under that legislation.

I should state at this point one, I guess, caveat about our participation. The commission sees itself as a neutral body in labour relations. It sees its role as helping the parties manage their relationship in reaching collective agreements. As a result, we are very hesitant to speak about the current statute or proposed changes in the law, except in regard to the implications of any changes in the policy for the operation of the commission. We say that because any comments which we make on policy may be perceived as compromising our neutral status. The strike in the academic bargaining unit last fall and the extensive history in your briefing memorandum may well raise some issues of policy on collective bargaining about which we feel we cannot comment.

The first point I would like to address is the relationship between the College Relations Commission and the Education Relations Commission. In many ways, we sit here wearing two hats; that is, there are many days when we sit as the Education Relations Commission, and on many fewer days we sit as the College Relations Commission. The College Relations Commission is really the junior partner, shall we say, in the relationship.

As I understand it, the intent from the beginning was that the Education Relations Commission and the College Relations Commission would be essentially the same. The Colleges Collective Bargaining Act followed on and applied some of the basic policy decisions found in the School Boards and Teachers Collective Negotiations Act.

The membership of the two commissions has always been the same, except for a period in the early years when there were different vice-chairs of the two commissions. The staff of the two commissions has always been the same. Indeed, the assumption has been that the two commissions would really be one body, except that the commissions would operate with different statutes and the processes under these statutes are slightly different. The staff of the Education Relations Commission would carry out the duties required for the College Relations Commission. That is why, for example, in the budget which you see in your briefing paper there is no budgetary allocation for salaries and benefits for

the College Relations Commission and why all the expenses for that item come from the Education Relations Commission budget. Therefore, just to repeat, the commission and the staff are essentially wearing two hats, depending on the legislation being administered.

The commission consequently wishes, as far as the legislation permits, to have similar policies and procedures for both the schools and the colleges sectors in negotiations. This appears to have been the intent of the legislation as enacted by the Legislature in 1975, when the two statutes seemed to be almost copies of each other. The overlapping structure of the commissions has enabled this to be done. Indeed, the strategic plan of the commission operations treats the commissions as one, though I should note—I think it is an important item—that the greatest demand on commission and staff time is in the Education Relations Commission area—that is, in the schools sector—with the Education Relations Commission dealing with some 270 collective agreements between boards and schools, while in the colleges area we really have only two units, the academic and support staff. Grant it, very large units, but you can see the difference in terms of workload if you compare the number of bargaining situations.

The second item I want to address is the act itself and give just a brief overview of the Colleges Collective Bargaining Act. It is my understanding that when the decisions with respect to teacher bargaining rights were made for the schools, a further decision was made, that essentially the same rights, with similar procedures, would be extended to the colleges' personnel, both teaching and nonteaching.

1510

In the period immediately prior to the enactment of the Colleges Collective Bargaining Act, these employees had bargained under the Crown Employees Collective Bargaining Act. If one compares the colleges act and the schools act, if I could use those two short forms, one finds there were some modifications made in the colleges act. With respect to the provisions for negotiations in part II of the act—fact-finding, voluntary arbitration, final offer selection—the duties of the commissions are, word for word, the same in the two pieces of legislation.

However, there are some differences. For example, in the School Boards and Teachers Collective Negotiations Act there is a purpose clause which says, "The purpose of this act is the furthering of harmonious relations between boards and teachers by providing for the making

and renewing of agreements and by providing for the relations between boards and teachers in respect of agreements." Why it did not appear in the colleges act, I am not certain. Perhaps it was just taken for granted.

Under the legislation, agreements commence on 1 September and expire on 31 August, but the number of years for an agreement is not limited. In the college sector two-year terms have been normal. Notice to negotiate must be filed in January, prior to the expiry of an agreement, and an initial meeting of the parties must be held within 30 days of the filing. This allows a period of seven months, including the summer months, to negotiate an agreement prior to the expiry of the previous collective agreement.

If negotiations run into difficulty, mediation assistance may be provided by the College Relations Commission at any time. If an impasse in bargaining is reached, the commission may appoint a fact-finder before the collective agreement expires. In any case, if agreement has not been reached when the current agreement expires, the commission must appoint a fact-finder.

The fact-finder's role is to act as an independent third party and to review the issues already agreed upon and those still in dispute. He or she examines the positions of the parties on those issues not yet agreed upon, offers whatever comments and recommendations seem appropriate to assist the party and generally tries to bring to bear on the negotiations any outside insights that he or she may have to offer.

The parties then have 15 days after receiving the report to use that report to try to assist them. If during those 15 days agreement is reached, the report remains confidential to the parties and is not released to the public. If no agreement is reached, the report becomes public, the idea being that some sunshine, and perhaps some heat, may be placed upon the parties with the hope that they will resolve their differences. The parties may voluntarily, at any time in negotiations, decide to submit their differences either to interest arbitration or to final-offer selection.

After a fact-finding report has been made public, and if there is no longer an agreement in force, the employees may hold a strike vote. The union must also hold a vote on the employer's offer at some point in the process. Both of these votes must be held under commission-arranged supervision, as must any ratification votes when agreement is reached. All such votes are by secret ballot with commission supervision provided in the statute to ensure that the public interest has been protected.

The union, after a vote in favour of a strike, may do so with five days' notice to the employers. In the event of a strike, or lockout by the employer, the commission must undertake the responsibility in the public interest of attempting to find the balance between two rights. On the one hand, there is the right of the employees to withdraw their services, a right granted by the Legislature; on the other hand, there is the right of the students to an education.

This balance is tipped when the strike action, and I quote the words of the statute, "will place in jeopardy the successful completion of courses of study by the students affected." This wording is identical in each of the two acts we administer. When that balance tips towards jeopardy, it is the commission's responsibility to advise the Lieutenant Governor in Council, through the minister, of its opinion that there is such jeopardy.

Under both acts, where a question of good faith and bargaining arises from either party, the commission is responsible for such a determination. Other questions of the violation of the acts or, in the case of the colleges act, of representation rights are determined by the Ontario Labour Relations Board.

As I have described the process so far, it is identical to that in the School Boards and Teachers Collective Negotiations Act. There are some differences between the two acts, both in substance and the procedures under them.

Under the colleges act, as under the Labour Relations Act, the employer may modify the terms and conditions of employment whenever the right to strike or lockout is operative; in other words, when no agreement is in force and 30 days after a fact-finding report has been made public. Under the teachers act, no changes may be made until 60 days have passed after the public release of this fact-finder's report.

Under the colleges act, the employer has the right to lock out at any time after 30 days from the public release of the fact-finding report. Under the school boards act, a school board can do so only after strike notice has been served.

There are provisions in part IX of the colleges act to provide for representation rights and certification of the bargaining agent for each of the teaching and nonteaching bargaining units, while schedules of the act provide for exclusions from the bargaining units.

The school boards act gives bargaining rights to the local teacher units of the affiliate federations of the Ontario Teachers' Federation, in which membership is mandatory for all teachers in day school and diploma credit

courses. There is a duty of fair representation for the bargaining agent in the colleges act but not in the school boards act, and that duty is enforced by the Labour Relations Board.

There is also one further provision in the colleges act which is unique to labour law, and that is subsection 59(2), which deems every employee in the bargaining unit to be on strike when the union has commenced a lawful strike.

To sum up, the bargaining relationship in the colleges, with the exception of the fixed procedural steps towards a strike by the union, is more similar to the usual labour relations environment than is the bargaining relationship between school boards and teachers.

The College Relations Commission's role in this situation has been to assist the parties in the negotiations. We provide the fact-finding, the mediation and the supervision of votes. Occasionally, the commission also appoints grievance mediators or arbitrators for grievances under the collective agreement.

This brings me to my last point, which is the commission's role. Here I will start with a contrast, again, between the Education Relations Commission and the College Relations Commission. The Education Relations Commission sees its role with respect to school boards and teachers in terms of doing things to help the parties improve their working relationships and to promote and support a rational problem-solving style of negotiations. To that end, the commission has provided grievance mediation and relationships-by-objectives programs.

We have an information services branch which provides data on teacher compensation practices across the province and on collective agreement provisions which could assist in bargaining. Even the intent of the fact-finding process, a process by which an independent third party brings information into the bargaining process, is to support this approach.

In its role of dealing with the colleges as the College Relations Commission, this approach has not been as easy to implement. Bargaining is on a province-wide basis. The Council of Regents, and now the committee of presidents acting for the council, as well as the union, the Ontario Public Service Employees Union, are in positions quite different from those of school boards and the local units of teachers.

The relationship between the CRC and the parties is solely a bargaining relationship. The services asked for from the commission have been in regard to that bargaining. In the first few years of the commission's operation, the com-

mission did gather data on staff and salaries and benefits, but it was of little interest to the parties. Frankly, they were more interested in the school board teacher data collected under the Education Relations Commission mandate. The role of the College Relations Commission has been confined, therefore, to providing assistance to the parties during negotiations, in the form of fact-finders and mediators.

In closing, let me suggest that if you wish to explore the bargaining relationship and how the parties have used the processes in the act, we as neutrals are not in a position to give you any comments. I recommend, though, that you read Professor Gandz's report on collective bargaining in the colleges sector, which is summarized in your briefing note.

Thank you for your attention. We will be pleased to answer any questions. Many people here from our staff have long-standing expertise in the colleges area and they would be glad to help you.

1520

The Chair: Thank you very much. Taras, you had some questions?

Mr Kozyra: Yes. First, on the topic of the neutrality, and despite that neutrality, do you find yourself sometimes in a position where there are difficulties or conflicts with the two hats?

Ms Swinton: Between the two commissions?

Mr Kozyra: Yes.

Ms Swinton: I cannot think of any circumstance—

Mr Kozyra: Is that because they have not taken any differing positions; basically, one flows into the other?

Ms Swinton: They complement each other well. We use the mediators and fact-finders trained for the education—

Mr Kozyra: I guess it is speculation, but if they did not complement each other, would you then find yourself in a conflict position or is your role such that you can maintain that neutrality?

Ms Swinton: I cannot really foresee any problem of conflict, since the roles are virtually identical between the two commissions. That is, the neutrality is important to both commissions. We provide exactly the same kind of service. I guess the only potential conflict you could see is always the budgetary one, where do you put some of your funds for data collection and so on, but—

Mr Kozyra: Okay. The second question is on the jeopardy position. I am wondering how that is

established. Do you have set criteria or a formula—in monitoring the political and the public reaction and the student reaction and so on—to determine when a situation approaches jeopardy?

Ms Swinton: There is no sort of fixed point where you can say at, say, 15 days there is jeopardy. I think it is fair to say that jeopardy always rests on a determination about the context of that particular dispute, and in coming to a determination about that, we do think about some of the things you have mentioned.

We monitor phone calls; there is a record kept of phone calls from the public, from students, from parents. We are in contact with the parties. We have a mediator in, virtually in any of these situations, so we are always in touch with the mediator to try to find out how negotiations are progressing; that is, whether it looks like there is some chance that there will be a settlement in the foreseeable future or whether negotiations really are at an impasse. We draw on information that we determine, for example, from people within the college system the last time, as to the likely impact of continued strikes on various courses of study.

Mr Kozyra: How often has the jeopardy position been determined and called into ensuing action?

Ms Swinton: It is two in the colleges.

Mr Saunders: Two strikes in that and two jeopardy advisements.

Ms Swinton: On the academic side of colleges, and in the education relation, I think I counted seven. Am I right?

Dr Aim: Seven or eight.

Ms Swinton: Seven or eight since 1975.

The Chair: Are you finished on the jeopardy issue?

Mr Kozyra: Yes.

The Chair: Are there any other members who have any questions on the jeopardy issue? Perhaps we should deal with them, if that is okay with you.

Mr Kozyra: That is fine. I had another one after that.

The Chair: Okay, we will go back to you after we deal with the jeopardy one.

Mr Haggerty: My question relates to the neutral position that the commission takes. I have some difficulty in following that. Some place along the line, neutrality must cease and some action must be delivered.

When you talk about the arbitration and the fact-finding and that, I think that body is more neutral than your commission should be. Once those reports come in, you should be able to make a judgement call in the directions that the commission should respond.

Often, I think here, when you look at what has taken place over the years in a labour dispute, particularly with the colleges, we seem to forget the most important product, and that is the student. The long delays, in perhaps coming around to a final position taken by the commission—and often the parents, the students and even those employed in the industry look to the Legislature to get the results. I do not think that is the place. The Legislature should be a neutral body. That should be the neutral body, but not the commission. When does that neutrality cease?

Ms Swinton: I may have been misleading you inadvertently when I was talking about neutrality in my opening words. Where we are concerned to avoid discussion is on some of the kinds of items that Mr Pond mentioned in his briefing note where you are talking about changing, say, the bargaining structure in the colleges; some people are pushing for local bargaining and there are some recommendations against. We prefer not to take any stands on that. Our job is to administer the legislation, and we feel that any kind of position we take would more than likely offend one party or the other and that is not going to work to our advantage or to the process advantage. So that is the kind of neutrality I am talking about.

In terms of the jeopardy ruling, we still perceive ourselves, I suppose, as labour relations neutrals, but you are obviously correct. At some point we have to make a determination on the best information we have available, trying to balance that right to strike, but at the same time, very much, the students' concern and right to an education, and make the best determination we can and give advice to the minister on that. So there is a point where we cannot just sit back and ignore, and we do not. We are constantly watching what is going on in the progress of bargaining and trying to gather information on how students are affected.

Mr Tatham: In this matter of jeopardy, I suppose it would make a difference depending upon the type of course an individual was taking as to the amount of jeopardy: If you are taking a nursing course where you had to flow through different areas of the hospital; if you were taking

a welding course to learn how to weld, you could do it today or tomorrow or some time else.

The question that arises is, would we be better off if we had these units broken down into smaller units to determine this area is in jeopardy and that area is in jeopardy so that people doing certain things would proceed in one area and not in another? Would that make sense?

Mr Saunders: Would it be perceived as impertinent if I were to ask if the member would want to draw a distinction between, let us say, a body saying that a nursing student's course is in jeopardy, but for a student in the same college taking a course in typography, that student's program would not be in jeopardy? I think that is calling for the wisdom of Solomon to try to say that one student's course is in jeopardy and another's is not in jeopardy. We were looking and monitoring very carefully all of the courses.

Now, probably for some of the students who came back after the 21 days of the strike, their courses were in less jeopardy than others, but the information that we had received was that, particularly in nursing programs, where the students are expected to write examinations on a fixed schedule, there was going to be a serious problem. There are a number of trades courses as well where the examinations are on fixed dates, and the colleges themselves have no control over those dates. They cannot reorganize things to accommodate, and because of that, in advising the commission, providing information to the commission, we were aware that some kind of problem was going to develop for these particular students. It might have been less for others, but for these we felt it was going to be serious.

Mr Tatham: If I may, Mr Chairman, are there any statistics as to the people who did not come back and what courses they were involved with as to the jeopardy that they were placed in?

Mr Saunders: No, we do not. We would have to ask the colleges' people to provide us with those statistics about the number of dropouts at this point in time. I am not entirely sure, to be honest, that they even have that information at this point in time from the colleges.

The Chair: I would just like to put a point of clarification. It is very easy for them to have that information and, quite frankly, I am surprised you do not have it, because, to me, it is relevant to what happens the next time and I am disappointed the commission has not sought that information.

Mr Saunders: We will have that information. Indeed, I was supposed to meet Mr Wright, the

director of the college affairs branch, on Friday last and that was one of the items on my agenda to discuss with him. Unfortunately, I got mired down in negotiations trying to assist the parties in the school board sector.

The Chair: We lost 800 students at Algonquin College because of the shenanigans last November.

Mr Lupusella: If I may, I would like to pick up the issue which was raised by my colleague, and it has to do with the issue of jeopardy. There is no fixed formula when a course is declared in jeopardy, but I am sure there are different factors which are in play to get to the point that a course is in jeopardy. I am just wondering how the commission can reconcile the issue of jeopardy with the principle of a right to education. I am sure the commission has a great interest in defending the rights of students. How can you reconcile the two—right to an education? Do you have any answer?

1530

Ms Swinton: If I understand you, and maybe I have, but I think the jeopardy is designed to protect the right to an education. That is, at some point—

Mr Lupusella: But sometimes the issue of intervention is too late. Therefore, the course might be in jeopardy, and therefore the role of the commission has to defend the basic principle, which is the right to education for the student. How can you reconcile the two?

Ms Swinton: I guess the problem is the legislation has two kinds of rights that are in there: There is a right to an education that is protected through the jeopardy advisement, but there is also a statutory right to strike. If one intervenes too quickly, that is, if each time someone goes on strike, three days later there is a jeopardy advisement, then you are really, I think, undercutting the right to strike, which is also a very important policy that is in that legislation.

Mr Lupusella: Do you not think that by calling the course in jeopardy earlier, you defended the rights to education for students, which they are all over the commission to do?

Ms Swinton: I think we have two rights we are trying to balance, and I think you really try to make a determination within the context of each strike as to how you can best balance both that right to strike and that very important right of students to education.

Mr Lupusella: Am I correct that in the last strike, one of the criticisms was that the board intervened a little bit late?

Mr Saunders: I think from the management side in that strike there was the feeling that the commission had intervened too quickly.

The Chair: The direct question we are interested in, in relating to the jeopardy, is do you have criteria that are written down, or would the commission want their political masters to write down parameters or discretions which you would call into account in deciding when the line has been crossed?

Ms Swinton: The closest we come now is we have in effect a procedural statement that says when we have to review. There are certain points where we have to meet and assess it. But in terms of sort of substance, "Here are the items that would lead to a finding of jeopardy," I think it would be very, very hard. Looking at it from both the Education Relations Commission side and the college relations side, it really does depend in part on what sector the strike is in, what point in the semester, or whether it is a semestered school, whether it is in the education side, whether it is a secondary-primary school. There are all kinds of things you would have to take into account, and I suppose one could think about listing a whole range of them, but you are still going to have this major sort of contextual exercise at the end, and it is also something that is happening day by day. You keep thinking about this each day the strike goes on and you are in touch with the mediator, so it is not the kind of thing where you sit down and say, "Let's have a hearing and decide," because it really is an ongoing exercise to think about a range of factors.

The Chair: Does the commission have any idea of how many students would have to lose their year in order to cross that line? It appears from the Algonquin experience that 10 per cent of the young people lost their year because of what happened in November. Is that how you would in some ways weigh it?

Mr Saunders: No, the question of dropouts did not even arise, because at the point in time when the commission was considering it, there was no information even from the colleges about the number of students who might not be returning. The colleges at that point in time were working under the assumption that all students would like to return, or that they would have programs reorganized in such a way that no student would have lost an opportunity to complete his courses.

So those 800 who left Algonquin, I think the college's management would probably have said that was their choice. However, if they had

chosen to return to Algonquin, we would have been able to provide them courses which would have enabled them to complete their year successfully.

The Chair: Yes, I am sure that some of those 800 would have left regardless of whether there was a strike or not, but I do not think 800 would have left. Perhaps 200 would have left. I do not know what that figure is, but of course the administration does not know at that time, because the intentions of the students are not apparent until classes begin again as to what happens.

But it would seem to me that it is of interest to the commission that if you have a 21-day strike in November next year, or the next time negotiations come up, you know that you are going to lose 10 per cent. I think jeopardy occurs before 10 per cent.

Mr Saunders: In the questions of percentages and dropouts, it is hard to know exactly why they would have dropped out, as you yourself indicated. The colleges, however, were telling students, and I think you would have to ask the colleges this question, but to the best of my knowledge right now, the colleges have reorganized their programs in such a way that no student who came back after the strike is going to lose a course because of that strike.

The Chair: It is the trigger that discourages some who are more easily discouraged than others from carrying on, or are pressed by financial matters or uncertainty or whatever.

Going back to Mr Kozyra, you had some other questions?

Mr Kozyra: I have one follow-up on this jeopardy that was raised while the other questions were asked on it. It seems to me, and it is no criticism of the commission, but in terms of information, vital information that is required does not seem to be readily at your fingertips, or the colleges', for that matter. If they could not tell you and give a fairly accurate estimate that up to 10 per cent of their students, in this case, were going to leave, if they could not assess that till after the fact, to me, that is a very drastic lack of information. It would be very important for you to have it to make this determination of jeopardy.

Perhaps some of that is impossible, but I would think also some of it, based on data and cumulative experience from one strike to another and so on, is there for analysis. To me, that is probably the most crucial bit of information, because once they are gone, they may never come back. It is like a doctor losing a patient and he is gone. I would think that steps, a letter from

this committee or whatever recommendations go out—that that is something that needs to be pursued.

Mr Saunders: Certainly the historical information now, with the experience of two of them, is going to give us a pretty good sense of what the dropout result of strike action is going to be.

Mr Kozyra: And you are pursuing getting that information?

Mr Saunders: As I said, I was going to be meeting with Mr Wright on Friday last.

Mr Kozyra: That was on your agenda, right; thank you.

The other thing, as I understand from what I have heard from both Mr Pond and your presentation, and I think it may very well be outside your mandate, but during the strike I had the local bargaining unit approach me and say: "You know, we've got a problem here. Here in Thunder Bay we didn't even want this strike, we voted against it, and we feel that our provincial executive is gung-ho and locked into this and we have no way even of communicating our dissatisfaction with them. We think the only way open now is somehow to get the ear of the commission." Is that outside your mandate to have done anything?

Ms Swinton: We got lots of phone calls from teachers this time saying, "We don't want to be out here." One of the ways in which pressure can be placed on the union and we can monitor and even get information about the programs is through this kind of call. It was often interesting to hear teachers phone up and say, "Please declare jeopardy, because I am concerned that I can't make up X amount." They would tell you what the curriculum was and how they would have some problems. It was a useful kind of information to get from the teachers as to whether we could do anything. It depended on other information as well.

1540

Mr Saunders: That, of course, is inherent as well in the provision of the legislation for the deemed strike.

The Chair: Mr Owen?

Mr Owen: I was not going to ask a question on jeopardy; it was another matter.

The Chair: Okay, I will put you down on the list. Mr McLean?

Mr McLean: Would you be able to supply more about the amount of students who did not return to classes after the strike?

Mr Saunders: I do not know whether I can or not. I will have to call Mr Wright in the colleges relations branch to get that information from him.

Mr McLean: Perhaps some of your staff could do that. I would like to know what it is.

Madam Chairperson, you spent some time during your comments talking about the rights of students. I am curious to know what rights students have when there is a strike.

Ms Swinton: The legislation, at some point, gives them protection, to have a declaration of jeopardy when the successful completion of the courses of studies is threatened. That, I guess, is the right which they have in the legislation, to be protected through the jeopardy rule.

Mr McLean: I have some questions with regard to the 75 persons who are employed on a freelance, per diem basis as mediators and fact-finders. You have a budget of approximately \$738,000. Could we have a list of those people and what their per diems are and what they have done? Somebody would have that, I am sure.

Ms Swinton: The per diem is \$350 per day for fact-finders, and for mediators it is \$50 per hour. If you want a list of all of the present mediators—you understand, I suppose, that we use them as they are available.

Mr McLean: Yes, but I am sure that you would have 1988 and 1989 annual reports where it would have it in there that so-and-so got so much.

Ms Swinton: Oh, you want the amount each person earned?

Mr McLean: Well, I am sure it is somewhere—

Ms Swinton: Certainly, but I wanted to clarify that you would like—

Mr Saunders: That will be, of course, with respect to the Education Relations Commission rather than the College Relations Commission.

Mr McLean: Yes, but it appears we are dealing with all in one here, pretty well.

Ms Swinton: You would like both then, I guess.

Mr McLean: Sure, I would appreciate that, so that we could look at it later.

Is the chairperson full-time or part-time? Part-time, I presume.

Ms Swinton: Part-time.

Mr McLean: I have some other questions, but I will leave them.

Mr Owen: I was going to ask questions about the very same matter of the fact-finder people

who are involved. Of your total staff, how many would be involved in fact-finding without a strike? When it is ongoing, just your usual business operations, do you have any who are involved in fact-finding at all?

Ms Swinton: Our staff tend not to be involved in field work.

Mr Owen: So you are not out just getting information in between strikes?

Ms Swinton: No. We have this core of independent third parties who come in and do the assigned tasks under the legislation, the fact-finding and mediation, but the field service operation does—

Mr Owen: When a crisis has developed and you have to deal with it, do you bring them in?

Ms Swinton: Yes.

Mr Owen: Do you have any staff who deal with this on an ongoing basis?

Ms Swinton: Maybe I should just ask Dr Aim to speak, because he is the director of field services and can explain the monitoring.

Dr Aim: In terms of being fact-finders or mediators, in a word, no, the staff are not engaged in either fact-finding or mediation activities, period.

Mr Owen: What about monitoring in between problems?

Dr Aim: That is our major function in field services, monitoring negotiations and trying to keep abreast of what is happening, if they are meeting, what the issues are, what their relationship is like and whether or not they may see a need for third-party intervention somewhere down the road.

Mr Owen: How many of your staff, on a permanent basis, would be involved in that role?

Dr Aim: One—me.

Ms Swinton: For colleges.

Dr Aim: For colleges.

Mr Owen: I am just talking about colleges at this stage. If a problem develops and you are required to become involved with a strike or the threat of a strike, do you pick out who the contract people will be?

Dr Aim: Yes.

Mr Owen: Are you the person who supervises their qualifications and are you the person who sifts through the information that they are bringing in?

Dr Aim: I cannot say that I do that entirely by myself, but in a way, yes. It is a collective decision that has been built up over time, and we

have this roster of third parties, most of whom have been active third parties as fact-finders and mediators for a large number of years.

Mr Owen: Up to how many have you got available or have you used for this purpose?

Dr Aim: In this past year, collectively between the College Relations Commission and the Education Relations Commission, we have appointed somewhere in the neighbourhood of 130—now I will be wrong there, out a bit—third-party appointments of one kind or another. In the colleges, we have made just four appointments, two to the academic bargaining and two to the support staff bargaining.

Mr Owen: One of the criticisms of this process we have available to us under this legislation is that in the first hours and days, sometimes longer, the parties sitting down have been questioning some of the information or statistics which have been made available to you by these very people. I am just wondering if you have any response to that. Is that inevitable, is that part of what is bound to happen or can you suggest a better way of maybe avoiding the debate on the information and stats to get on with the problems they are trying to come to grips with?

Mr Saunders: In the school board sector the whole question of factual information and data used to be a major issue in bargaining, in the 1970s, but with the information service in the commission both parties have been much happier because of the independent sources of data in the educational sector.

In the colleges sector, part of the problem has been that the parties themselves have not indicated very much interest in any of the data which we would have available for them. We did gather data, as the chair said, from the colleges in the 1970s. They were not terribly interested in it. They were interested in getting outside, into the school boards area for something with which to compare.

Mr Owen: Isn't that interesting? What you are telling us does seem to be at variance from—

Mr Saunders: What did the colleges people say to you?

Mr Owen: I gather there has been an indication that they felt that some of the information was faulty, but you are saying they have not even questioned the information or looked at it.

Mr Saunders: They have not even used it.

Mr Owen: That is interesting.

The Chair: On the gathering of the data and the fact-finding, Gandz in his report is quite critical of the fact-finding mechanism and what it has been able to achieve in the past and what happens. I believe that in your strategic plan for 1989 you address the whole problem of fact-finding, etc. It just seems to me that the worst thing that could happen is that groups go on with bad statistics, no statistics or false statistics, whatever. The only thing I can say is that last November the teachers on the line were given different stories, as was management, and there seemed to be a lot of conflict over what was in fact truth and what was not truth.

Mr Saunders: Is that conflict in terms of what was happening in the bargaining at that point in time?

The Chair: I think it was over the basis on which they were going, etc. I do not understand that in today's modern society, where all of the colleges are highly computerized in terms of their enrolment, the number of students taking this and that, the salaries and the levels benefits and all this kind of thing, why the commission would not pay more attention to that part, in keeping an ongoing statistical record, even in the years when there was not conflict, so that those issues would not come to the fore and present such a problem.

1550

Mr Saunders: I am wondering whether this is conflict over the information coming out of the negotiations or whether it is conflict over information about what their exact compensation package was in the 1988-89 year, that kind of thing.

The Chair: There are always conflicts in the negotiations. Both sides will exaggerate and each will deflate the other side's good and bad points, whichever, but I guess if the commission had produced for all the world to see what in fact the level facts were and let them play with the rest of it, then it would be of some benefit.

In terms of the criticisms in the Gandz report on the fact-finding method, one of the things it said was that you were in too early, when the issues had not narrowed, so that the fact-finding was too disparate in terms of what it was going after. Have you any comments on that?

Mr Saunders: Yes, I could make a comment on that. Part of the difficulty, I guess, in the fact-finding process in the colleges has been that the parties in the colleges in the past have often come to an impasse, gotten into difficulty, when relatively few issues had yet been resolved between them. The fact-finder going into the

dispute has been in the position too often of having to deal with, as you say, a wide disparity of issues because the parties have done so little to resolve them themselves, is in that position often because of this and because the parties have had difficulty in assessing their own priorities about what they want and what they think is important. The fact-finders may well have had difficulty trying to produce a report which would be useful to the parties as they get down to the point where they are narrowing the issues and getting close to agreement. Perhaps Dr Aim would have some comments as well.

The Chair: Could I just add one thing? Gandz also talks about, as I understand it, the fact that it seems to be sort of just another stage in the process which tends to lengthen the process rather than bringing it into focus.

Dr Aim: Just to add to Mr Saunders's comment, in the 10 times, I guess, that we have appointed a fact-finder to the academic and the nine or 10 times that we have appointed a fact-finder to the support staff negotiations that the appointment has been required by the legislation, because the contract has expired on 31 August and we are required to appoint a fact-finder forthwith, or both parties have been in agreement and requested that we make an appointment.

The Chair: Do you think you should be left with some discretion as to whether you should make the appointment?

Dr Aim: Absolutely.

The Chair: In other words, if both parties demand it, do you think you should be able to say: "No. Go out yourselves in a closed room and figure out what the issues are. You come back to us with the issues and then we'll appoint the fact-finder"?

Dr Aim: A very good example of that is this past round with the academic staff where they approached us, I believe, in April requesting the appointment of a fact-finder and the appointment was not made in April, or May, or June.

The Chair: So you do have discretion now.

Dr Aim: Oh yes, up until 31 August. All I am pointing out is that our appointments have been made either in situations where both parties have requested we appoint a fact-finder and indicated to us that they are indeed at an impasse or the legislation says that they are at an impasse because their previous agreement has expired.

Mr Tatham: Are you saying then that the facts are not accepted by both sides? Is that it,

that whatever the fact-finder brings in, this information, is not accepted by both sides?

Mr Saunders: No.

Dr Aim: The fact-finding report is not binding on either party. Hopefully it will assist them in their future negotiations after they get it, but it is not binding upon them. In theory, I suppose they do not have to accept anything in that report.

Mr Tatham: What are you going to do to build trust? It seems to be a matter of trust. Is that it?

Dr Aim: I guess trust would certainly play a role in that, yes.

Mr Tatham: What can you do to make the thing work better?

Dr Aim: We try to give them the best fact-finders we can, people who are experienced in both labour relations, and indeed people who are experienced in terms of dealing with the colleges.

Mr Tatham: Do you have a better success rate with the boards of education than you do with the colleges?

Dr Aim: In terms of settlements arising out of fact-finding? No question about it, yes, sir.

Mr Tatham: What is the parallel? What can you do? What are you doing there that you are not doing here?

Dr Aim: There is the same list of third parties and the same kinds of people go into both. I wonder at times myself why there are some differences, but of course school boards are in quite a different economic and environmental context than are community colleges. So obviously they are not exactly the same. For example, one major difference is school boards have taxing authority, as you know; colleges do not. School boards therefore have some greater destiny over their expenditures and, I suppose, therefore over their negotiations than colleges have.

Mr Tatham: Still and all, the fact-finder does a better job with one than with the other. They are accepted.

Dr Aim: I do not know if they do a better job, but it seems that there are more reports that are accepted, or accepted more quickly, by school boards and teachers than there are in the community colleges.

Mr Tatham: That might be an area you might take a look at, though, and find out why perhaps.

Ms Swinton: If it would be of assistance, we have a report, prepared by Professor Richard Jackson at Queen's University, on evaluating fact-finding in the Education Relations Commis-

sion which was just published in the last year. We could provide copies to the committee if that would be of interest.

Mr Lupusella: Would you just tell me if the last contract was going for a year or two years?

Mr Saunders: Two years.

Mr Lupusella: When is the next set of negotiations going to start between the community colleges and the management? When is the starting time going to be?

Mr Saunders: Notice would be filed in January 1991.

Mr Lupusella: Am I correct that between January 1991 and the whole summer, the negotiation is not really serious with the community college teachers and that they are using the students at the start of the school year as the pawn to get what they want?

Mr Saunders: That is a question that I would hesitate to comment on, I think, for fairly obvious reasons.

Mr Farnan: It is not true.

Mr Lupusella: It is true.

Mr Saunders: However, a lot of people in this past round of negotiations felt that the two parties—and I am reflecting points of view that were offered to me—really did not get down to serious negotiation until September.

1600

Certainly we found in monitoring the negotiations during the spring last year that serious negotiation really had not taken place, except in terms of procedures for how they would negotiate, prior to the point in time when the parties made the first request for a fact-finding appointment. Fact-finders who had gone in in April, when the parties first requested the appointment, would have found themselves in the situation where nothing had been resolved and absolutely everything was open to negotiation, and that is an impossible situation to try to go into. How does a fact-finder say anything meaningful or useful to parties in that kind of a situation?

They did some substantive negotiation through May, and we did appoint a fact-finder, but even then, after a number of issues had already been resolved, there were still a great many outstanding. The perception of people outside was that they really did not get around to serious negotiations until either very late in the summer or into September. If my memory serves me, they were having some meetings in August.

Mr Lupusella: The other question I would like to raise is: Between January 1991, I guess,

and September 1991, is the board approached or made aware of the issues which are bargained between management and the teachers, or are you completely independent and there is no mechanism involved that gives you the opportunity to get a little bit informed, just about the ongoing discussion between the two parties? What is the position of the board?

Dr Aim: We would be in touch with representatives of each side, again finding out how they are getting along and when they are meeting and what issues are in dispute and how they see their negotiations going.

Mr Saunders: It was through this monitoring mechanism that in the spring of 1989 we were making the decisions about provision of fact-finding, whether we could be putting in a fact-finder and at what point in time. We were talking to them after each of the negotiation sessions, to both parties, not just to one but to both, to hear what they had to say.

Mr Lupusella: Do you have any recommendation you could make before this committee in order that we can have some leverage in the Legislature which would empower the commission to be more actively involved in the negotiating period in order that a strike can be easily prevented? Do you have any suggestion or recommendation?

I know my own solution, for example, is to enact legislation and ban strikes during the school year, but maybe it is not your solution. Do you have any other recommendations which you could make to this committee?

Ms Swinton: I think that is the kind of issue we would rather not comment on.

Mr Saunders: I guess we are acutely conscious that your predecessors in the Legislature gave the teachers in the colleges and the support staff in the colleges the right to strike. Presumably when the Legislature did so, it was a right that they intended, if there were trouble in the negotiations, the teachers would be able to exercise.

It has always been a major problem for the commission in balancing these rights. On the one hand, the Legislature gave a right, and surely the Legislature would not intend that a right be given and then, after it has been exercised for X number of days, that right would be taken away again. On the other hand, students equally, as you say, have a right to education, and it is for that reason that the commission was given that responsibility to represent the public interest to try to determine, as best as possible for a group of well-informed

human beings, at what point in time the inability of the two parties themselves to resolve their dispute is going to create jeopardy as the legislation defines it, inability to complete successfully the courses of study of the students.

Our monitoring of the strike and our talking to people to try to assess this was always aimed at trying to find out, are the colleges going to be able to organize programs in such a way that students will be able to complete their courses successfully? The colleges commission, and the Education Relations Commission, was given this major responsibility—I do not think it is unfair to describe it as an awesome kind of responsibility—by the Legislature that when, in its opinion, jeopardy had arisen, it would advise the Lieutenant Governor in Council, through the minister, that something should be done.

Can I just add one other thing? There is one other element in this to be considered as well that was a factor in this past fall. If on day Y of the strike, your mediator says to you, “It appears if we hang in for another day the two parties are going to be able to settle themselves,” would you want to call jeopardy in that situation? To some degree as well, your calls on this must be influenced by what you know is happening in negotiations.

This last time around, the commission was acutely aware that in the negotiations it appeared nothing was happening. Therefore, they intervened. Initially there had been talks and the parties recessed. When they came back together, even though the mediation went on nonstop for several days, and it appeared each day as if something was going to happen, it did not. So the commission finally said: “Uh, uh. It doesn’t look as if the parties are going to be able to reach agreement by themselves.”

Maybe that is the worst form of jeopardy, that the parties themselves in negotiations abdicate responsibility for coming to agreement between themselves.

Mr Morin-Strom: I would just like to address more specifically some of the recommendations that Jeffrey Gandz made in his report with regard to fact-finding and providing of neutral information. He goes to some length with regard to information-based bargaining and notes, as I think you have noted as well, that almost every fact-finder, arbitrator and mediator has commented on the lack of reliable and valid data. He goes on to say:

“While the parties gather some information themselves, it is fragmentary and of dubious reliability. Indeed, the colleges themselves have

never managed to get their acts together in terms of providing data which can be compared across colleges. Whether this is because they have not known how to get such data or because it has served their interest not to have it is simply not known. What is clear is that in such a data-poor climate, speculation, exaggeration and accusation substitute for careful analysis.”

In terms of redressing this situation, he does have a recommendation. He said,

“The CRC has the expertise to work with the parties to design and maintain an appropriate database which can be used for bargaining and, if the parties will not co-operate in this willingly, the CCBA gives the CRC the authority to get the data from the colleges.”

Have you considered using that legislative authority to insist on your right to collect those data and provide meaningful, neutral data as a basis for future negotiations?

Ms Swinton: To answer that briefly, no, we have not insisted, but I think if Ms McElroy could speak, she is director of information services and can explain how we have serviced colleges. To some extent, there is a major financial implication to doing what Mr Gandz suggested. That is part of the reason we have not made the request.

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Ms McElroy: In speaking to that, I would like to put it in terms of the work that we do at ERC, to clarify a couple of matters. First of all, the ERC information service is a very small unit and we rely almost exclusively on pre-existing sources for information, for data. We compile and we regroup and run analyses on data which are already available to us.

The information that we collect in respect of our clients under the Education Relations Commission comes almost exclusively from the Ministry of Education or the school boards directly. Over the years, the opposite party has in fact deemed it to be reliable even though it comes from one of the parties. Ultimately, I think the acceptability of the information is a key ingredient in providing so-called neutral data.

With one minor exception, the Education Relations Commission has never undertaken to do original survey research, primarily for the financial reasons that are mentioned in Jeffrey Gandz’s report.

In any event, if we had the financial resources to do so, we would still be faced with, from whom do we collect this information and is it in fact going to be acceptable to both parties? Does that answer your question?

Mr Morin-Strom: Well, no, it does not.

Ms McElroy: I am sorry.

Mr Morin-Strom: The Gandz report said that you have the authority to get it if the colleges are not willing to provide it and, in particular, are not willing to provide it on a consistent basis so that you have comparable data.

Ms McElroy: That is correct.

Mr Morin-Strom: He has recommended that you be given the financial resources to be able to go and do it.

Ms McElroy: That is correct.

Mr Morin-Strom: As long the colleges are not willing to do it, perhaps you have to prod them by saying, "We're going to use our authority and go ahead and do it on our own if you're not willing to do it responsibly."

Ms McElroy: If we have the financial resources in place, we are prepared to do that, but it is a very expensive proposition to do original survey research, specifically in the area of working conditions. We have never done it for our clients in the Education Relations Commission.

Certainly the object of collecting those data is that they are in fact used by both parties and they are accepted by both parties. Even if we had the financial resources, it would have to be a joint effort, in other words. I think to make this a worthwhile endeavour, the commission would in fact have to sit down with representatives from both parties to determine what kinds of information would be acceptable, and, yes, we are perfectly prepared to do that, given the appropriate resources to do so.

The Chair: Have you asked for the money to do it?

Ms McElroy: Yes, we have.

The Chair: To the minister?

Ms McElroy: Yes, we have.

Mr Morin-Strom: Do you have an estimate of it?

Ms McElroy: I think the recommendation in the Gandz report mentioned \$200,000, of which a certain amount would go to the hiring of a staff person to operate in the field function. That would leave about \$130,000 or \$140,000.

The Chair: Would that be adequate?

Ms McElroy: On the basis of the kinds of information that apparently the parties are requiring, it looks like it would require surveys of individual staff. My best information in terms of

these kinds of surveys is they are very expensive and that would not be adequate.

The Chair: I guess there are data and then there are more data. What you are talking about, I agree, would be very expensive, but are there not all kinds of data available there that are already in those computers?

Ms McElroy: At the community colleges?

The Chair: Yes.

Ms McElroy: Yes, I understand there is information.

The Chair: Are you trying to marshal any of those data?

Ms McElroy: No, we have not.

The Chair: Why?

Ms McElroy: I guess primarily because the parties have never—

The Chair: I guess our frustration here, and from what I see, is that you are not showing leadership in terms of trying to face a problem. I realize there are other parts external to your function in this process which are adding to the frustration of what is happening, but there have been 10 negotiations go on and I do not think any of them has been settled by the two parties on their own. Therefore, there is something wrong.

Our frustration here is that we have to answer to the constituents when their kids are not going to school and try to find a solution. And we have a lot of other kinds of matters as well. What we are looking for is leadership in terms of somebody saying to us, "Look, we need some help in this area or in that area so that we can do a better job in even the restrained area that we are involved in."

When you read the reports on what has happened, not only in the last five years or the last three or four years when these commissioners have been involved, the thing does not work. We have got to fix it and we have got to deal with the restricted area that you are in and not go over to the relationship between the Council of Regents and the academic and management, and on the other side as well. We have got to deal with you, and I guess our frustration here, in listening to this, is that you seem to be unwilling to say: "Look, let's go out and get some more data. Let's press these colleges and the other side to provide data, so that when we get into this thing there's less misunderstanding and there's more hard evidence."

Ms McElroy: I agree with you. I guess the area in which the parties seem to require the most information—the greatest need is in the area of

assignment and workload. It is my understanding that there is a paucity of information related to that area. In other words, we would have to go out and survey, and frankly the commission is not in the position to do so because of the restrictions in terms of both the dollars and the personnel.

The Chair: I am sorry. I cut in on you, Mr Morin-Strom.

Mr Morin-Strom: Does the commission agree with the Gandz report's criticism of fact-finding as it currently stands? Do you accept his recommendations?

Mr Saunders: I do not think we are in quite a position that we would accept or reject his recommendations in terms of the process, because I suspect that the parties have some pretty strong opinions themselves. I would not want to comment about that except in administering it.

I do not think, though, that it is unfair to say that, from the colleges' point of view, we would feel that fact-finding in the colleges, particularly in the last few years, has probably has not been very helpful to them in their negotiations. It has been of help in the school boards, but in the colleges sector the fact-finding has come very early in the process, at a point in time when there are still too many issues on the table. The fact-finders, even the best people we can find, are frustrated by the attitude of the parties towards the fact-finding process. As the chair indicated, the parties—particularly the union—make no bones about the fact that they regard the fact-finding process as a hurdle on the way towards the pressure point when they can conduct votes.

Dr Aim: Having said all he does about fact-finding, he still recommends there be fact-finding, does he not?

Mr Morin-Strom: Yes, more of it.

Mr Saunders: Yes, more of it and at a different point in time.

Mr Morin-Strom: Do you feel that the colleges have enough at risk in their negotiations? It seems to me that in the negotiations there is quite a difference compared to school boards. You deal with both. In both cases, on the labour side when you go on strike you are losing pay, there is something at risk. When you are dealing with a school board, it seems to me you are dealing with an organization that is responsible to local voters and that the school board has something very definitely at risk on the local scene in terms of a strike. I question whether in

fact, on the colleges side, in their negotiating framework, they have something at risk, particularly when the government is going to pick up the tab for whatever the final settlement is anyway and they have no responsibility back to—I suppose they do to some appointment level, but they do not have that same kind of responsibility that school boards do to local constituents.

1620

Mr Saunders: There is certainly much greater pressure on the board side, as you say, in school board negotiations, but I would be very surprised if all of you gentlemen sitting here in this committee also did not receive an enormous number of calls during that strike. So there was pressure on you as members of the Legislature. I would be very surprised if the minister's office did not have a pretty heavy volume of phone calls during that strike as well.

Mr Morin-Strom: We are not the negotiators. In theory, I understand that the colleges are supposed to be independent of that political influence and in fact will be in quite a different position than a school board is.

Mr Saunders: I would hesitate to comment, but I would suggest that Mr Gandz, in his report, has some pretty shrewd observations about the way the structure of negotiations has affected what happens in the negotiations.

Mr Morin-Strom: So you would be inclined to reflect his views and his recommendations?

Mr Saunders: He has made some pretty shrewd ones, yes.

Mr Farnan: I just want to commend the delegation on the very political way you have answered a lot of the questions. I envy your ability. I think in many respects you seem to take a middle ground, recognizing the fact that there are two parties involved.

I also want to apologize, Mr Chairman, for interjecting a little earlier and expressing some discontent with Mr Lupusella's remarks earlier in the hearings. However, when I heard a Liberal member of the committee suggesting that teachers were at fault in the recent community colleges dispute, I wondered if this was Mr Lupusella's personal view, the view of the Liberal Party or the view of the other members of the committee. But certainly all of us, I think, who were involved in looking at this situation—

Mr Lupusella: It is the principle of a right to education which led me to my question. It appears that he does not believe—

Mr Farnan: If Mr Lupusella will have the courtesy to be quiet for a moment, he may respond if he wishes.

I have had the opportunity to sit on both sides of the negotiation table, representing both employees and management. The only point I would have a problem with in your presentation is when you talked about the union looking at fact-finding as a stage to move on to the pressure point. I think you lost something in your overall presentation, because up to that point I thought you had been fairly balanced. I have certainly sat on management boards that have been equally as adept at moving towards a pressure stage. I am not prepared to point fingers. What I am prepared to say is that my experience during this strike was that teachers, by and large, want to teach, they want to be in the classroom. If there is a problem, it is not with the professionals who are doing the job of teaching, it is with the process.

My question to you would be similar to that by the chairman. If next year we are looking at going through the ritual again, because that is what we perhaps have, a ritual—and it takes two to tangle; it is a ritual that will be entered into by both management and union—can you point to a constructive way, for the benefit of all of us, for the teachers, for the students, for the parents, for society as a whole, that says, “Hey, this is a way we can really get a hold of this issue”?

Mr Saunders: Can I respond to part of what you have said and then the second part? I did not intend to point the finger particularly at the union. This was simply the opinion that I was hearing this past spring. Certainly management in the colleges, in the past, has indicated no greater happiness with the fact-finding process. Both sides are inclined to think of it in much the same way, that conciliation boards are part of both the federal and the provincial labour legislation and labour process. As you know, conciliation boards have largely fallen into disuse. People got to regard them, as I said, as kind of hurdle and therefore they did not have much value.

As for the second part of your question, the commission will certainly be looking at what may be done within the present framework in the next round of negotiations. As you know, with the Gandz report having been released two years ago now, in January 1988, the minister has had a review of the bargaining process on. Indeed, last spring the ministry released a number of responses to the recommendations in the Gandz report for study by the parties and for public comment because it was its intent to amend the act to see if something could be done to restructure the process.

Frankly, what is happening in that study by the ministry at this point in time I do not know. But the commission certainly would be very remiss, given the experience we have had in the last rounds of bargaining, if we did not look to see what could be done within the confines of the present process in order to do a better job, to provide more effective assistance for the parties in 1991.

Mr Haggerty: I had the opportunity to read some of this summary of recommendations by the Gandz commission's report. The report singles out two particular bodies; that is, the Council of Regents and the teachers and staff of the colleges. There is nothing mentioned in there about students, and the question was raised by one of my colleagues from the opposition side, “Do the students not have rights?” When the student signs a contract to enter a college program and to receive educational instruction, and hopefully he is going to get a diploma that will assist him in getting a job opportunity someplace and some time in life, there are other parties concerned too; that is, the taxpayer, the parent. He has to put up some upfront money or he has to secure the loan. You add the bank or the financial institutions into this too.

There is nothing mentioned about a contract of the student with the Council of Regents or the college itself. Is there not someplace along there that that contract should be honoured? I think that is the point my colleague Mr Lupusella was perhaps trying to get to.

Ms Swinton: I think Mr Gandz's terms of reference really were to deal with the collective bargaining relationship. I think he was trying to make recommendations to facilitate agreements without sanction, if at all possible, or to reduce the length of the sanction. In that sense, one of the overriding concerns has to be the student, but I do not think his terms of reference—I was just trying to look through them quickly—were to address more than that facilitation of the bargaining.

1630

Mr Haggerty: But surely that must have been brought to his attention during his study, his report, and come to his recommendation someplace along. Students play perhaps one of the most important roles in the educational system. Without them, we would not have to have the commission here. We would not have to have schoolteachers or anything.

Ms Swinton: I suppose the best thing might be to ask for Mr Gandz to appear on why he

designed his study the way he did, because we only had the report and have met with him to discuss—

Mr Haggerty: What are your feelings on it in the commission? What about the students' rights? This was raised by Mr McLean also. What are the students' rights in this? If you sign a contract, should that contract be violated by a strike?

Ms Swinton: The legislation recognizes that—

Mr Haggerty: Forget about the legislation. It is a contract. There is legislation in dealing with contracts.

Ms Swinton: I am not sure I follow. The legislation would take priority over a contract anyway.

Mr Haggerty: I do not know whether there may be conflicting viewpoints or not, but there is a contract here. There is an obligation to the person who is buying that service to fulfil that from who is delivering it.

Mr Saunders: That is a very difficult balance, because this Legislature of which you are members gave the teachers in the colleges a right to strike, and at the same time there is a right to an education. Like I guess every serious problem in our society, it seems to be a question of balancing out rights, how do you balance those rights?

Mr Haggerty: But normally, I guess it would be when a contract is no longer binding, or teachers find some other areas or some disagreement between the Council of Regents and the teaching staff. You said something about January. They start in January to give you notice that you have got to start bargaining. All of a sudden September comes along. The bargaining ceases, and you have got the student there who is buying that service and nobody is delivering. That is the point I am asking you. What do you play in that part to really get down to this thing? Forget about your neutrality here, you have a position and a job to fulfil to see that those children get education.

Mr Saunders: We put into the academic bargaining this fall one of the most experienced, one of the best mediators in this province, Terry Mancini, who has had long experience with the Ministry of Labour. Probably, before he retired from the Ministry of Labour, he was regarded as one of their best, if not their best, mediator.

Mr Haggerty: I believe I have had some dealings with him.

Mr Saunders: He worked with the parties to attempt to resolve the dispute. It has always been

the practice of the commission, because the commission has been aware of the difficulties in bargaining, particularly in the academic sector in the province, to put in the best and most experienced mediators that it can find and that it can employ.

Mr Haggerty: You are coming right to where I am leading to, I think, because now you tell me you have the best in the field here to resolve a labour impasse—hoping he is going to resolve a labour impasse. When you have the best there and he cannot do it, then the onus is upon the commission to move.

Ms Swinton: And we did.

Mr Saunders: And we did.

Mr Haggerty: Yes, but you had a strike and you had a lockout—I should say strike— and you had students who did not get their education. As the chairman says, there are 800 and some up in one college, Algonquin College, who left.

The Chair: They did not vote for the strike either.

Mr Morin-Strom: I do not know if Ray is suggesting that the right to strike be taken away.

Mr Haggerty: I did not say that at all.

The Chair: You should not bait.

Mr Haggerty: I come from the labour ranks and I know what—

Mr Morin-Strom: That is true. Okay. It would be quite fascinating if we had the Conservatives being the ones who give them the right to strike and the Liberals being the ones who want to take it away.

Mr Lupusella: Can you speak about the issue that is before you?

Mr Morin-Strom: A couple of final questions. I wonder if you could explain why it is that the grievance mediation program has been underutilized by the parties.

Dr Aim: The only reason I can give that it has been underutilized, if in fact it has been underutilized, is that the parties have not taken advantage of it. It is a service that the commission provides, free of charge, on a joint request basis, and we have appointed a number of grievance mediators over the years. As a matter of fact, at one point in time we had Harry Waisglass acting as a permanent grievance mediator, roving around the colleges cleaning up the hundreds of backlogged grievances that existed, and he did a terrific job in that. But the only explanation I can offer to you if in fact it is underutilized is that the parties do not request it. We have supplied a grievance mediator every

opportunity we have had where they have jointly requested it. And it is very successful, highly successful.

Mr Morin-Strom: I guess that in some of the answers we have got to our committee's inquiries, Mr Saunders said that the grievance mediation program is not often used by the parties under the act.

Dr Aim: It has not been used on many occasions. Where it has been used, it has worked.

Mr Morin-Strom: Part of your strategic plan for 1989 is to promote and market this program, so you see the question now about whether it has been underutilized, which is different from—

Dr Aim: Given the number of grievances that exist in the colleges, I guess it would be fair to say that perhaps it has been underutilized, but I do not think the commission itself can take responsibility for that. We have had meetings with the parties. They are certainly aware of the program. Brochures in both languages have been sent out to the colleges and to the council and to OPSEU and they are quite aware of its existence. It is just a matter of asking us jointly to make an appointment and we do it expeditiously.

Mr Morin-Strom: You are relating the fact that it is underutilized. I was not suggesting that it is your fault it is underutilized, but I was questioning whether there is some motive, whether perhaps you see something going on, in either the colleges or the unions, that has been causing them not to apply to use it.

Mr Saunders: Part of the marketing, part of providing this assistance, is really going to be to have to meet with those parties to raise this question: "What are your expectations? What help can we give you in this regard? Why have you been so reluctant?"

In the education sector, when we have put on our Education Relations Commission hat, I think the grievance mediation program has been pretty well used, and it is used normally at that point immediately prior to a rights issue being arbitrated to try to expedite the resolution of the issue, try to avoid the expense and the difficulty of arbitration.

I think it is worth noting that in the education sector, for all there are, to the best of our knowledge, a pretty large number of grievances turning up, over the years since 1975, I think there have only been about 375 grievances ever go to arbitration in the education sector. When you think about that, over a 15-year experience that sure is not very many compared to what you

encounter in the private sector in grievance arbitrations. It has been a very low proportion, which indicates that the parties themselves in the school sector are pretty adept at resolving their own problems and interpreting their agreements.

We have appointed a number of grievance mediators over the years who have been very successful in resolving, but given that we are aware that there have been a pretty substantial number of grievances in the colleges, we feel that the colleges might have made better use of this program and, for whatever reason, they have not. Therefore, one of our plans currently is to get out and find out why and what we can do to help them.

Mr Morin-Strom: That figure, 375, is that colleges and schools combined?

Mr Saunders: No, the school boards, schools only, under the Education Relations Commission.

Mr Morin-Strom: What is the college number over that period?

Mr Saunders: I am not sure. Sharon, do you have it?

Ms McElroy: It is probably more than 1,000 over the same period.

Mr Morin-Strom: Finally, you also made some references to a new program you call the relations by objectives program, which we have no information on other than some references, for example, in your strategic plan for 1989 to its being a priority to promote awareness of that program. I wonder if you could provide us with some details of what that program is about.

Mr Saunders: Could we bring you some pamphlets about it tomorrow and Dr Aim can tell you about it? We are, for example, going to be doing a workshop this week. We have a group of teachers and a board.

One of the problems for the RBO program in the colleges, however, is that the bargaining relationship is essentially a relationship between agents, the group of presidents representing the Council of Regents on the one hand and the public service employees' union on the other hand, and strictly a bargaining relationship. But at root, when you are talking about RBO programs, you are really talking about employer-employee relationships. Employer-employee relationships are much more direct, as you can understand, in a school board setting and it is much easier, therefore, to operate this kind of program and have some good effect with it.

The Chair: I have canvassed the other members of the committee and I do not believe it

will be necessary to have you appear before the committee tomorrow, so I would ask you to perhaps put something in writing with regard to the last question regarding the commission's relations by objectives program. I would like to thank you all for appearing today and hope that we can provide some incentive for some changes that might assist you in the future.

Mr Saunders: Thank you. We hope you can.

The Chair: Before the committee rises, perhaps we could meet in camera for a very minutes before we adjourn.

The committee continued in camera at 1643.

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Standing Committee on Government Agencies

Agency Review: Custody Review Board

Second Session, 34th Parliament

Wednesday 21 February 1990



Speaker: Honourable Hugh A. Edighoffer
Clerk of the House: Claude L. DesRosiers

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday 21 February 1990

The committee met at 1102 in room 228.

AGENCY REVIEW CUSTODY REVIEW BOARD

The Vice-Chair: I call the standing committee on government agencies to order. Today, we are dealing with the Custody Review Board. We have several people from that board here. Would you take a seat up across the front, those of you who will be making a presentation or answering any questions that there may be. Lorraine Watson, I understand, is the chairperson and she could introduce who is with her. I anticipate you probably have an opening statement.

Ms Watson: You started so very quickly I did not have my shopping bag of goodies opened up and sorted here.

The Vice-Chair: You will have lots of time to do that.

Ms Watson: I would like to introduce the people who have accompanied me for the purpose of this presentation. Keith Quigg is a member of the Custody Review Board; Murielle Labrie is the co-ordinator of the Custody Review Board and several other boards within the operational services branch of the Ministry of Community and Social Services; Anne Sheffield is the manager of young offenders, native and legislative policy within the Ministry of Community and Social Services; Jane Rogers is also with the policy branch; Nancy Lunney is the manager of the operational services branch, within which the Custody Review Board is serviced.

Unfortunately, Paul Fleury, who is the manager of youth services for the Ministry of Correctional Services, and Glenn Semple, who is the program planning officer with the Ministry of Correctional Services, have both succumbed to illness and are not able to be with us today. I will try, where possible, to answer any questions that you may have.

The Vice-Chair: Are they going to be off long, if we happen to want to meet with them later tomorrow?

Ms Watson: I do not think there would be a problem of speaking with them. Paul, I know, was diagnosed with pneumonia last week. Unfortunately, I just received a telephone mes-

sage that Glenn is ill, I do not know with what. I do not think that would be a problem at all.

Most of what I am about to say to you I am sure you have heard and read numerous times. It was difficult with all of the research that I understand is prepared for you in advance of the hearing. I am sure that a lot of this will be repetitive, and if you find it so, please do stop me. What I have tried to do is simply run through the legislation once again, the history of the board, some of our observations and issues that we have identified for ourselves.

The Custody Review Board, as you are all well aware, is empowered to conduct reviews as set out in sections 50 and 51 of the Ministry of Correctional Services Act and sections 92 and 93 of the Child and Family Services Act. Our mandate is contained in both of these acts, but it does not have anything to do with the kinds of custody dispositions or levels of dispositions because only the youth court has that responsibility.

Young persons in places of custody or detention, both phase 1 and phase 2, under the Young Offenders Act have the right to apply to the Custody Review Board for a review of the provincial director's decision to hold the young person in or transfer him to a maximum-secure place of custody from a place of medium-secure custody. They also have the right to apply for a review of the particular place where the young person is held or to which the young person has been transferred, the right to a review of a provincial director's refusal to authorize the young person's temporary release under section 35 of the federal act and the right to a review of the young person's transfer from a place of open custody to a place of secure custody under subsection 24.2(9) of the federal Young Offenders Act.

In addition to the above duties, the Custody Review Board will review the placement of probationers who are ordered by the youth court to reside at a place specified by the provincial director where the place specified is designated as a place of open custody. Young persons held in a place of temporary detention may also apply to the board for a review of the particular place where they are held, which can involve a review of the level of detention.

The Custody Review Board was established in November 1985. Initially, the Custody Review Board served two additional transitory roles, that of the Training Schools Advisory Board, which we did until the last training school board left the system under the old Juvenile Delinquents Act, and that of the Secure Treatment Admissions Committee until the courts assumed that role following proclamation of Bill 107 earlier in 1989. These two initial roles overshadowed the legislated role of the Custody Review Board. More recently, we have been working on refining our procedures, accessibility and communication with the various service providers within the two ministries.

The Custody Review Board's role is one of negotiation. We are not required to conduct hearings under the requirements of the Statutory Powers Procedure Act and therefore any hearing held to review a young person's application is very informal. Because the board is breaking new ground, both in law and policy, it will take time to work through our processes and procedures.

The board received its first application in April 1986, and during the past year, 1989, 28 applications were received. In holding our hearings, what we try to emphasize to the young person is that while we do not have the authority to change the decision of the provincial director, we can make a recommendation that the provincial director, in most cases, will follow or attempt to follow following our negotiations.

The young person can be represented at the hearing by a parent or other advocate. We conduct the hearings in the form of a review really. It is simply that everyone has an opportunity to be there and hear what everyone else says. The provincial directors, we found, have been extremely co-operative in providing information to us. The board finally makes its recommendations to the provincial director in writing following the completion of the hearing or review.

1110

A memorandum of agreement was signed by the Minister of Correctional Services and the Minister of Community and Social Services with the Custody Review Board in February 1989. Presently a young person, on intake into a custody or detention facility, has his rights and responsibilities explained to him or her. Both ministries have a rights and responsibilities booklet available, and I believe we have made copies available to you. On intake, the young person is supposed to have this explained to him,

whether it is a phase 1 or phase 2 facility. However, we have been informed and have found that intake procedures are not generally standardized across the province.

The young person must apply to the board within 30 days of the decision, placement or transfer. The Custody Review Board forums are supposed to be readily available to the young people in the custody facilities and he or she may express a wish to have a review done of placement, a temporary release denial or whatever. The custody facility staff, youth worker or probation officers are encouraged to assist the young person to complete the form and send it to the office in Toronto.

Following receipt of the application, the board will inform the young person within 10 days of whether a hearing or review will be conducted. A recommendation must be made within 30 days of receipt in the office of the application. An extension, however, can be jointly agreed upon with the young person and the board, should an extension be required.

After conducting the hearing or review, the CRB may recommend to the provincial director: that the young person be transferred back to a medium-secure place of custody; where the board is of the opinion that the place where the young person is held is not appropriate to meet the young person's need, that the young person be transferred to another place; that the young person's temporary release be authorized; where the young person has been transferred under subsection 24.2(9)—usually that is where a young person has been causing problems within a custody facility and is moved to a secure place of security for a period of 15 days—that the young person be returned to the place of open custody or, where applicable, to a place of open detention. Or the board can confirm the decision, placement or transfer.

As I said, in the last year we have had 28 applications come to the board. I am doing this from the top of my head, but approximately 13 hearings were held, 22 recommendations were followed or met by the provincial directors, two were not within our authority and four applications were withdrawn.

I became the acting chairperson in August of this year and I have been trying to meet with the board on a regular basis to try to identify some of the issues and work on resolving them, such as the way we proceed at a hearing, how accessible we really are to the young people and how we can best ensure that the philosophy of the Child and Family Services Act and of the young offender

program within the Ministry of Correctional Services Act is followed.

One of the issues we have identified is the concern by the young persons within the system that the recommending powers of the Custody Review Board do not carry any authority. In other words, why apply to the board for a review, because really, if we can just make recommendations, the provincial directors are not going to do anything about it anyway.

Another issue is the knowledge of the Custody Review Board to the service providers, youth workers and intake staff within the custody facilities. In some areas they are very familiar with the board and its role and in some areas we have serious questions about how well known the board is to them.

Another issue is the whole question of temporary releases, if a young person wants a visit to home to his family or for an occasion on a weekend. Recognizing that he is a young offender, but that there are very clear policies to be followed for a temporary release application, if it is denied what sense does it make to apply for a review of that denial? We are not going to be accessible to that review for a week or so, and it is after the fact. That is something that we are trying to work on and to ensure that in fact we can immediately respond to a request for a review in that matter.

There is also the need for members of the Custody Review Board to become more familiar with the system, the facilities and the personnel as well as the policies of both of the two ministries involved with the board. Robert Macaulay, in his report *Directions*, spoke of the need for agencies, boards and commissions to spread the word of their operations and procedures in existence. It is one thing for a policy to exist, but that policy will never be implemented properly if the users are not properly informed of it. This the Custody Review Board is endeavouring to do at this time.

I will be quite happy to answer any questions. Anne Sheffield, who is the manager of young offenders, native and legislative policy, was in the Ministry of Community and Social Services at the time that the Custody Review Board legislation was being prepared and perhaps could speak to you of the intent behind the philosophy of the act in the evolution of the Custody Review Board.

Ms Sheffield: There are three points that I would like to draw to the committee's attention, just building upon what Lorraine has already

conveyed to you and also the materials that have been made available to you prior to this hearing.

I think it is important to note that the Custody Review Board is part of the province of Ontario's implementation of a federal statute, the Young Offenders Act. It is part of the scheme that Ontario has put into place to implement, as I said, a federal statute dealing with criminal law matters affecting young people.

Second, I think it is important to make sure that the Custody Review Board setup in our own provincial law should not be confused with a body that is referred to in the Young Offenders Act, in the federal statute, which is a review board. Many people often mix these two bodies up and somewhat transpose the mandates of these two boards. The review board that is set up in the federal Young Offenders Act is a body that any particular province may choose to establish pursuant to the Young Offenders Act. Once a province does that, the review board may then, by federal statute, review some of the dispositions of the youth court. They act as a sort of supplementary body to the youth courts, as an alternative mechanism, if you will, in resolving matters before the youth court.

Ontario, at the time the YOA was proclaimed, chose not to implement a review board under the federal statute. I think we did so for a number of reasons.

First of all, we were concerned about the possible duplication of effort between the youth court and the review board. The way the federal statute is set up, it is possible that the youth court could be reviewing the decisions of the review board, and so unnecessary time and effort would be spent there. I think we also felt at the time, and still do, that there is a need to reserve the very serious decision-making that is involved in dispositions under the Young Offenders Act to the youth court itself. Finally, I think in particular the people at our own Ministry of the Attorney General are always quite concerned that the legal procedures that are available before the courts have evolved over, of course, centuries are there to protect the people before them and those procedures may not have been equally available in matters before the review board.

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In short, Ontario decided not to establish a review board. We did, however, decide to establish the Custody Review Board as an administrative tribunal under the provincial law, dealing with, as Lorraine has said, some very particular decisions that are made, basically by bureaucrats, by the provincial director, who is a

staff person in either our ministry or the Ministry of Correctional Services.

We chose this route, I think, for two important reasons. This is really, I guess, the bottom line in terms of what our intent was and still remains with respect to our belief in the value of the Custody Review Board.

First of all, despite its advisory status, its recommending status, it does serve a very important purpose as a check on a government-managed service system. Through its ability to respond to requests for reviews of decisions made by the provincial director's staff people, it is one of several mechanisms that we have sought to implement in our legislation to ensure public accountability for administrative decision-making. I think that is the first important reason why this board was put into place and why it continues.

Second, from a program perspective, I think the board serves a very important purpose in contributing to the rehabilitation of young people. By this I mean that it responds to requests by young people for review of decisions that have been made about them, and by responding in a negotiating way, in an informal way and in a very real, human way, it seeks to involve those young people in the reasoning behind those decisions and to show that the system can be fair and just. In doing that, I think it does, as I said, serve as somewhat of a rehabilitative tool. Of course, the whole purpose of our young offenders system is not only to protect society but to rehabilitate those offenders, and in rehabilitating them serve ultimately a more general purpose of protecting society by preventing recidivism.

Those are two very important purposes, I think, for the Custody Review Board. I would be pleased, as Lorraine would, to answer any questions that you have.

The Vice-Chair: Thank you. I have three gentlemen on the list already.

Mr Haggerty: If I could direct a question to the members of the board, you raised some concerns in dealing with the matter about the recommendations to provincial directors, who may or may not act upon them, some orders that you made concerning a client, or a youth offender. You touched on it. Do you have any concerns that you want the committee to be aware of here, or recommendations that we can maybe change some of the legislation or make recommendations to change it that may assist you? I do not know how many numbers you go through. How many times do the provincial directors refuse your recommendations?

Ms Watson: There really has only been, within the past year, one instance where a provincial director in the north felt that the placement of the young person in the south was the best placement for him because of the lack of facilities in the north for this young person. In that instance, I am not sure that any changes to the legislation would have made any difference.

Most of the provincial directors whom I have come into contact with have been very supportive of the role of the board. We actually spent a fair bit of time a year or so ago discussing the whole question of whether we wanted to request the ministries to examine the need to change the recommending power to that of a decision-making body. We came to the conclusions that with that it would only then require another review, that in fact the recommending is powerful in itself, that if we follow the role of negotiating, we can achieve the same end.

I am not sure that any changes to the legislation at this time would benefit the role of the board, certainly nothing that I could identify yet, but, as I said, the board's role is still very much evolving. It is difficult to really come to terms with what may be identified in the future, unfortunately. We are still so young in that regard.

Mr Quigg: If I could add to that, the board has to operate fairly expeditiously with regard to reviews and hearings. Because of that, we felt that if the board itself was given the power to make a binding decision rather than a recommendation, that would tie in to the Statutory Powers Procedure Act, we would get into reviews of those decisions, and the decision itself would end up a longer process than the young person might even be in custody. We felt it would not be in favour of our action and our mandate to have that power. We still believe, as Lorraine was saying, that to recommend is the best way to go. You get more bees with honey than you do with doggy do, and that is what we believe.

Mr Lupusella: I have a few questions I would like to bring to your attention. One has to do with the number of cases which you heard last year. One measure of criticism which appears to be quite evident from these 28 cases is that the majority of appeals are based on the fact that young offenders would like to move close to their residence. Is that true?

Ms Watson: Yes.

Mr Lupusella: From the 28 cases, can you give us more or less the percentage of these young offenders who applied before the board just to get closer to their own residence?

Ms Watson: That is something that I did not anticipate. I guess too in the whole question of statistics, as the board evolved, the whole philosophy of the Young Offenders Act requires—at least, I tend to think of them as individuals, so I have difficulty categorizing it into statistics. Ideally, there would be lots of time to go through each one individually, because I think so many of us have different interpretations of the philosophy of the Young Offenders Act and a lot of the controversy involving it.

Let me just see if I can tie into that, and if I cannot, I will get that answer for you as soon as possible. I can give you a few specifics that are readily at hand.

One application was from a young person who was in the London area, in Ailsa Craig, specifically, which is just outside of London. His mother lives down in the Hamilton area. For those of us who have a common access to public transportation that is not a problem, but his mother was participating in counselling jointly with the young person that appeared to be having some positive benefit to the young person. Unfortunately, because of the lack of a bed in the area, it was necessary to move him to the London area. His request was to be moved back so that his mother could access and participate in joint counselling with him. That is one of the 28 cases.

To be perfectly honest, I felt that was a more-than-reasonable request. It is one that actually is not in 1989. I realize it is just very recently at hand.

Mr Lupusella: But the reason the board is guided by is the charge of the young offender. I am sure that you do not just take into consideration the principle of counselling as one primary importance which might lead to the transfer of the individual from one institution to the other.

Ms Watson: Right.

Mr Lupusella: You will take into consideration the global aspect of the case. Am I correct?

Ms Watson: Yes, very much so.

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Mr Lupusella: What is the weight of the judge's decision in guiding the board as to whether a young offender should be transferred from one place to the other?

Ms Watson: The judge, in his disposition, sets the level of detention or custody and the length of custody but does not make recommendations as far as where the young person will be located is concerned. That is determined by the ministry, the provincial directors, the people who are charged with that responsibility for

assessing the availability of beds in an area. If the judge has made a recommendation that the young person participate in counselling and the young person is willing to access that counselling, then that is taken into consideration, but the judge's recommendation or his sentencing as to level and length is paramount.

We can only assess the location in terms of, is it an open custody disposition? Is there another open custody disposition that would be more appropriate to meet the needs of that young person? Or if it is a secured custody disposition, we do the same thing, but we cannot change or alter or affect the level of detention or custody.

Mr Lupusella: Has the board developed a set of policies since its inception which is guiding it to make decisions when a case is heard, or are you guided by pieces of legislation on which you base your decisions?

Ms Watson: As I said at the outset, because we are still evolving, we do not have anything written down that says, "We will adhere to this policy and this policy and this policy." To this point, we have been simply trying to address ourselves to the elements of the CFSA and MCSA.

Both ministries have their set of policies and procedures that I am trying to become familiar with and make the other members of the board familiar with, but we do not have them structured in the sense that the Custody Review Board will pay attention to this and this and this. It is all of the legislation and policies that we try to pay particular attention to, and particularly the philosophy and how the legislation is to be interpreted by the service providers.

Mr Lupusella: If you compare the power of your board and the power of the provincial director, do you not see your role as useless?

Ms Watson: No, I do not.

Mr Lupusella: The other question which might follow is why people are supposed to appear before your board instead of appearing before the provincial director. I still do not understand why there is this discretionary power to follow the board's recommendation, and my question is why people should appear before your board instead of appearing before the provincial director.

Ms Watson: The only way I could respond to that is that, in order to ensure that the system is in fact addressing the paramount need for the protection of society, first and foremost, and at the same time addressing the special needs and developmental needs of the young person in

custody, who makes sure that the system works? Who makes sure that the provincial director is doing his or her job properly? Who is interpreting the procedures and policies of the various legislations? Who makes sure that the young person does not become criminalized because he falls through the gaps?

Although the policies and philosophies of the YOA and the CFSA are wonderful when you read the section on the rights of children, I think we should all have those rights—well, I guess we do—but if the provincial director simply reviews his own or her own decision, how does the system know that we are in fact ensuring that the special needs of young people within the custody facilities are being addressed?

I can only respond that I would not agree that the provincial director is the appropriate person to review his or her own decision.

Mr Lupusella: He is accountable to the minister, because he is a civil servant. There is this accountability between the minister and the provincial director.

Ms Watson: Granted.

Mr Lupusella: If certain rights are breached, I think that he is responsible for that to the minister.

Ms Watson: Again, the only way I could respond to that—and I would ask Keith, who is involved in a professional capacity with young people in need—is that the very many levels of government bureaucracy sometimes do not flow or, when they do flow, by the time you get to the top, or to the minister, it is too late. There is a case right now that I am reviewing of a young person who was sentenced to an illegal disposition. It has been three months now since that sentence was passed. The system has not responded to her request to review or appeal that disposition. Although it is not mandated clearly, it comes out in the form of the review by the Custody Review Board that this young person is in a placement with a request for an appeal that has still not been addressed.

When you look at the length of time that a young person is in custody, in many instances it is such a short period of time that by the time she goes to the youth worker and to the unit supervisor and to whatever other levels are in that institution, the time is up and that young person's cynicism with the whole process is just solidified and intensified. This is a young person who is very bright, who has been in care since she was three, and here she is at 15 on the threshold of becoming a phase 2 young offender because I think the system has failed her to a certain

degree. I believe that in five years' time we, the Custody Review Board, may find that, "Look, the system is working so well, the provincial directors all interpret the legislation, the philosophy, perfectly." Then I would be the first one to recommend recognizing the need for government responsibility, to recommend that in fact it be delegislated, but at this time I do not think that, with the Young Offenders Act evolving, you do the same thing, you throw it all out before you really determine if there is a role there. I cannot say that we truly have had the opportunity to determine that.

As far as your original question is concerned—and I am sorry; I guess I digressed from that—I do not believe it would be appropriate for the provincial director to review his or her own decisions. I would ask if you would perhaps like to have Keith or Anne respond as well.

Mr Lupusella: No, you have given me enough information.

Mr Quigg: I would like to add one thing to answer your question. I think in a way you answered your question, because you said that the young offender may have access to the minister if the decision by the provincial director was not agreed with. The access to the minister is through the Custody Review Board.

Mr Lupusella: Again, there is a conflict, because he has the discretionary power not to follow your recommendation. He might stop the process or the safeguard which the ministry created to safeguard the rights of the young offenders in the province of Ontario. Any decision which you might deliver as the result of an appeal is not binding. That is why I reached the conclusion that in some way the power of the board is completely useless.

Ms Watson: Can I just add a point? The fact that a provincial director may choose not to follow the board's recommendation is in fact a powerful statistic in itself, because when we do report to the minister it is something that will be identified readily to him, because we do report directly to the minister. In the bureaucracy itself, by the time that accessed the minister's attention, it would be long past any resolution that would be effective. But the way it is structured, the report to the minister is that, "A provincial director was unable to follow our recommendation for the following reasons." If it is something that we can identify, has something to do with policy, with the legislation, then that will be included in the report to the minister. So I would say that I now feel and recognize that the board has more power

as a result of that, and it eliminates another review function if we were to have that decision.

Mr Lupusella: The last question which I have, if I can have your indulgence, is, when an appeal is heard are you going to the claimant or is the claimant coming to you?

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Ms Watson: We go to the young person. We try to be the least disruptive to the program and to the young person's placement as possible.

The Vice-Chair: I have a couple of questions to ask. How many facilities are there across the province of Ontario?

Ms Watson: I am going to have to bow to Anne Sheffield. Unfortunately, I do not have those figures for the Ministry of Correctional Services. It is very difficult to put a figure on the open-custody placements because they have two beds in one facility, three beds in another, six in another, and the open-custody facilities are closing as quickly as they open. The difficulties, of course, as we are all aware, in getting facilities in group homes in various localities also complicate things, so I cannot give you a figure.

The Vice-Chair: How many placement rooms, then, have you for the young offender?

Ms Watson: We can get that figure for you. Unfortunately, I did not bring all of my materials with me. I know that they have currently—I would hate to pull it out of my memory bank, but I will get that figure for you. The number of young persons in custody facilities within phase 1 and phase 2?

The Vice-Chair: Yes.

Ms Watson: They are at pretty well capacity right now. That should give you a fair idea of the number of beds that are available.

The Vice-Chair: Do you know how many young offenders are in custody in the province today?

Ms Watson: Anne, I think, has something here. I know there is a more current figure that I thought would be brought, but in the Ministry of Correctional Services there were 1,152, including phase 1 and phase 2, and in the Ministry of Community and Social Services there are 716, for a total of 1,868 in the period April to June of 1989.

The Vice-Chair: It seems like a lot.

Ms Watson: That is the average daily count.

The Vice-Chair: Fine. Is your board satisfied with the care that they are receiving or does your board look at the whole care situation across the province, that it should be improved or should be

expanded? Are you recommending anything perhaps to the ministry, that there should be more youth centres established for our young offenders?

Ms Watson: Certainly, if the philosophy of the Young Offenders Act and the two provincial legislations were to address everything perfectly, then, yes, there is a need for more custody facilities. There is a need to have as normal an environment for many of the young persons who are in the custody facility initially to not be institutionalized. That is part and parcel of the whole YOA philosophy. The difficulty when you are trying to work is, in many instances, a lot of these young people come from poor parenting environments and so the system is trying to work with the parents as much as the young person when there is a distance between where the parents are, the lack of money, lack of access to transportation. It is difficult when you have a young person in Sharbot Lake, which is three and a half or four hours' drive from Brockville, with no public transportation. Brockville is an area—I do not want to highlight any one community because I come from Kingston and I know Kingston is just as guilty; not in my own backyard.

The Vice-Chair: I have two other questions, and one relates to that. Is your board pretty well representative of the four corners of the province? Keith is from, I presume—

Mr Quigg: Simcoe, Ontario, by Lake Erie.

The Vice-Chair: Right. And you are from Kingston. Is anybody from the north on your board?

Ms Watson: No. That is one of the areas that we are working with the two ministers on now to try to ensure that—although the legislation says that we can have a maximum of 15 members, initially it was recommended that the board be limited to about six, to see how we can respond with six. The difficulty, of course, is that very factor that we do not have northern representation. I would like to see the board have some francophone and aboriginal representation, simply to meet those other—

The Vice-Chair: Right. Of those approximately 1,800, how many would be, say, north of Parry Sound? Is it a small number or a larger number?

Ms Watson: I am not sure. Jane does have it.

The Vice-Chair: Okay. The 28 reviews that you have had, that is a very low number in my estimation.

Ms Watson: Yes.

The Vice-Chair: Have there been requests that were denied or are there any—

Ms Watson: One of the members of the board and I were asked to make a presentation at the Probation Officers' Association of Ontario annual conference in Sudbury last fall. At that time, it came to our attention that in fact in eastern Ontario, and I can speak from personal experience with the Ministry of Community and Social Services, the probation officers there are well acquainted with the Custody Review Board and the forum. In other areas of the province, we do not know how they communicate the young persons' rights and responsibilities to them.

It is an area where, as I said, the board is still evolving. We have determined there are some issues that need to be resolved. That is the whole question, that we do not know. Is it because the system is working so well? I do not think that is necessarily the case. I think it is really a question of what Robert Macaulay said in his report, that the board needs to get out there, needs to meet the service providers in all areas of the province and needs to ensure that if the system is working well we can say it is working well.

The Vice-Chair: It would be nice to know the figures with regard to northern Ontario, the number of young offenders and the number of placement spaces that you have for them.

Ms Watson: We are embarking actually in March, meeting with one of the YOA co-ordinators in the north who is going to bring us up to date on the reality in the north as far as availability of beds and the problems up there are concerned.

Mr Tatham: I have a question. Of what ethnic background were these 28 offenders? Do you break that down at all?

Ms Watson: No, I do not have a breakdown. I can get you that.

Mr Tatham: I think you sort of answered the question. You suggested that there should be somebody on your board who would look after a particular ethnic background, but I just wondered—

Ms Watson: No, it was really just to bring that perspective to the board in the event that we do have, for example, a young native person. I can think of one in particular from the north. In fact, that was the one specifically. There was not a facility in the north available for him. So it is not that we have identified a particular need; it is simply to anticipate, to have that perspective. It is as if we had all lawyers on the board or all

teachers or social workers or probation officers or what have you on the board. It is the perspective that I think we bring as outside lay people—

Mr Tatham: You would call a person in then if you had, say, a francophone or somebody from the aboriginal group. You would bring them in for the particular case? Is that how you would do it?

Ms Watson: No, I do not think so, Mr Tatham. I think it is having a consciousness of what the problem of the native child in the young offenders system is. It is not necessarily that we have identified a need at this time for that person to be intimately involved in a review of the decision. It is, I think, to be truly representative of the province and to be able to respond as immediately as possible to a request that we have the geographic diversity of the province represented on the board, as well as those elements that do create special needs, identifiable needs, as far as the young person in the north is concerned.

Mr Tatham: What age are young offenders? What age group do you deal with?

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Ms Watson: From the age of 12 to 18. From 12 to 16 is phase 1, under the Ministry of Community and Social Services, and 17 and 18 under the Ministry of Correctional Services.

Mr Tatham: What length of time are they in custody, usually?

Ms Watson: It varies. The maximum disposition for anything short of first- and second-degree murder, I think, is two years. I could not give you an average length of disposition. I know that certainly the majority of them are six months, that I have come across.

Mr Tatham: If a young person went in at 18 and turned 19, would you deal with that case or not?

Ms Watson: If it was before his 18th birthday, yes.

Mr Tatham: You say he.

Ms Watson: Or if it were she.

Mr Tatham: Are they mostly hes? They are mostly hes, I suppose.

Ms Watson: Yes.

Mr Tatham: One other question. Just going through the stats, I see that it costs about \$3,600 per case. How many cases do you have back, say, for the last two years?

Ms Watson: The Custody Review Board had 18 in 1988, 10 in 1987 and 27 in 1986.

Mr Tatham: What did it cost back in 1986?

Ms Watson: I do not have that figure. For 1986, the cost per hearing? I think my difficulty is that I am not fully conversant with the budget process in the service to the Custody Review Board and I think the grey area that I do not begin to understand is how the operational support was given when we were fulfilling the Training Schools Advisory Board and the Secure Treatment Admissions Committee. So I am not sure what these figures that you were provided with represent, but I will certainly get you that figure.

Mr Tatham: What does it cost to provide the service that is being done over a year? How is the graph done? Is it up or down or what is going on? In the final analysis, we have to go to the people, or ask for money to pay their bills.

Ms Watson: Yes. I think another area that creates some confusion is the services that the operational support office provides to other boards. The Custody Review Board is only one board within the services that they provide.

The Vice-Chair: If one of your staff members has some of these statistics that I asked for, perhaps it would be appropriate for somebody to read them into the record, if that would be possible. Does she not have them here?

Ms Sheffield: We can certainly provide that.

Ms Watson: Are you referring to the figures that were included in the questionnaire response?

The Vice-Chair: No, the question that I would ask is, how many placement areas were there in northern Ontario, and of the 1,800, what approximate percentage of those would be in northern Ontario?

Ms Watson: Jane does not have the report with her.

The Vice-Chair: Perhaps we could have that for this afternoon?

Ms Watson: Yes, we can for sure.

The Vice-Chair: Okay, fine. If we are meeting this afternoon, we will continue on until 12 o'clock and then we can adjourn and come back at two, if that is agreeable to the committee.

Mr Kozyra: A few quick questions. There have already been questions on the relatively low number of requests and I am wondering, although this is a relatively low number, is there an indication that there is a greater need out there that is not being met and that that number should be considerably higher and therefore you are going to pursue through further dissemination of information and so on? Is there this need?

Ms Watson: Yes. It has been identified by a number of people that actually—there are very positive comments about the whole process of the hearings and the reviews themselves to the young person's progress within the system.

Mr Kozyra: It makes you wonder why more are not availing themselves of the possibility.

Ms Watson: Yes. I spoke to one person I can think of specifically who did not know what the Custody Review Board was. I have spoken to a lawyer who asked that we provide that information to the legal community, because, hard as it is to understand why the legal community does not know about it, in fact it did not know about it. I guess the problem is that a lot of the lawyers represent the young offender itinerantly. It is not something that they particularly specialize in, so they have the Young Offenders Act legislation, but they do not necessarily understand how Ontario has interpreted it. In fact, I can think of two lawyers who have made that known to me.

The Chair: On a point of order, if I could have your attention just for a minute: Mr Morin-Strom is not going to be here this afternoon and perhaps you will be. Perhaps we could let him ask a question or two now.

Mr Kozyra: Okay, sure.

Mr Morin-Strom: I would like to ask about young offenders' homes in northern Ontario, and perhaps it applies to some areas in southern Ontario as well. There seems to be a problem in establishing homes in a number of communities. I know in my own community, Sault Ste Marie, development of the young offenders' facility has been delayed now for more than two years, basically by the not-in-my-backyard syndrome. The case is in front of the Ontario Municipal Board and there is still a fight going on as to where it should be located.

I wonder if you could just comment on how, as a result, our young people are taken hundreds of miles, Sudbury being the closest facility. You are talking 190 miles, a significant distance from their families and friends. My understanding is this is very destructive in terms of any kind of treatment or rehabilitation for these young people. I wonder if you have any suggestions for the government as to how perhaps it can ensure that these facilities are located, particularly in areas that are geographically diverse and it is difficult to stay close to your family. Do you have any comments?

Ms Watson: I guess I could make a comment of a personal nature. Certainly what is happening now is that the more recent applications are

reflecting the reality of the inappropriateness of placements because of the lack of facilities.

One of the roles that was suggested to me that the board could serve indirectly is to make the situation known to the minister, such as where very definitely the philosophy of the Young Offenders Act, the need to be the least intrusive in the young person's life, as much as possible, requires that he be kept as close to his home environment as possible. That is just not happening because of the problem with getting zoning approval, etc.

I do not know how we could—someone suggested that we could speak to it in our own localities. I do not think that is going to change anybody's views. I think it is the whole fear syndrome, and I am not sure whether the government should be playing more of an advocacy role in the various regions of the province to try to assure people that the protection of society is paramount under the Young Offenders Act and that, in the long term, good programs that meet the special needs in developing characteristics of young people are going to protect society, at much less cost in the long run, if we try to meet the goals of providing those deinstitutionalized environments in which to place them in custody and access counselling and therapy for them. I guess that is the only thing of a personal nature I can say.

As far as the board's role is concerned, it is not within our mandate to do anything other than report to the minister that placements are inappropriate because of the inability of more

appropriate ones. Do you have anything to add, Keith?

Mr Quigg: In 1972 there were 14 facilities, housing approximately 3,500 young people. Today that number has dropped significantly, and you have heard the numbers that are in facilities has dropped significantly. That is because of the trend to deinstitutionalize kids. When that deinstitutionalizing trend continues philosophically, a place is needed in communities for kids because they are no longer going into institutions.

The answer to the problem is "not in my backyard." Who wants that house on Brown Street in Dryden beside his? Who wants that six-bed open-custody facility beside a permanent home that you have paid a mortgage on and are living in?

If we can solve that problem, we can solve the problem of lack of beds in facilities for kids in communities. But it is a very difficult one. We have seen it in all communities. Nobody wants that open-custody home beside his house.

Mr Morin-Strom: Should the government do something with regard to municipal rights to be able to zone for custody facilities and in fact take away the right for the NIMBY syndrome to have a say? I mean, that seems like one solution.

Mr Quigg: It is beyond my mandate as a member of the Custody Review Board to respond to that. Really, I do not know.

The Vice-Chair: Thank you. We will adjourn until two o'clock this afternoon.

The committee recessed at 1201.

AFTERNOON SITTING

The committee resumed at 1410 in room 228.

The Vice-Chair: We will call the committee to order. We have some members here who I know want to ask questions, so we might as well proceed. I think Mr Owen is on the list.

Mr Owen: If I could, I would like to sort of put a face on the process and how it works. If I could ask a few questions I think it might flesh it out for us. For example, if an offender wants to avail himself of what is provided here in this legislation, can he do it on his own? If not, is he required to have a lawyer? Does legal aid provide anyone to assist in the process? How does that aspect work? How does he manage to get it working and launch it? And then I have a few other things along that same line.

Ms Watson: When a young person goes into the custody facility, the probation officer, youth worker or intake liaison officer—it depends on whether it is a secure custody facility and how the various custody facilities operate—someone is charged with the responsibility to explain to the young person his rights under the Child and Family Services Act, to a review of this, what his rights are and what his responsibilities are. In the course of that explanation, he is told about the Custody Review Board.

The forms are supposed to be available in every facility and I would assume that—for example, in eastern Ontario the custody facility may not have the forms physically there—the probation officer can access the forms. In reality, if someone sent a form to us in writing from a young person, it does not have to be on the actual form. It is just really a process that gives us a date, the name of the young person, why he is appealing for a review, etc.

Your question related to legal aid and legal representation. Because of the structure of the review board, it is not required that there be any kind of legal representation.

Mr Owen: So you do not have a—have you ever had a lawyer act for you?

Ms Watson: Yes, we have.

Mr Owen: But most of the time you do not.

Ms Watson: I would say in the majority of the cases, no. We try to keep it really as informal as possible, but there have been legal representations made on several occasions, two in particular that I can remember. Both felt that it was an extremely positive experience for the young

person, that it gave the young person an opportunity to hear the system's reasons for his placement in a venue in which he listened and absorbed it, as opposed to coming in, in some cases being frightened of the custody—it is the first time the young person is in custody, perhaps, or it is a secure environment and, no matter how much you try to make it so that he understands what is being said to him, it is not necessarily the case that he absorbs and hears what is being said.

Mr Owen: Because that is usually explained to them at the time they are being advised where they are going and why, but again, they might be very nervous and have other problems and they might not hear it.

Ms Watson: I do not know about you, but I know when my kids were younger you could say something to them and you could see the vacuum.

Mr Owen: It is not penetrating.

Ms Watson: It is not penetrating. And so I think actually the board is looking into—and Keith has done some work on it—the learning-disabled, for example. It is well documented that one of the manifestations of a learning disability is that the learning-disabled person's ability to concentrate and to absorb are limited, and so whether there is any feasibility to some kind of video being explored that would not only combine responsibilities—in other words, say to this young person: "If you are going to be here, we have a point system with good behaviour. You can achieve this number of points if you make your bed," that kind of thing—and doing it in a way that the young person understands without just having to sit there and sort of tune out, and in that process, explaining his rights to a review of his placement or a decision that affects him within that placement.

Mr Owen: When you receive the form or something representing the contents of that form, do you have staff who go to him or do you just review the documentation that is available in the courts? Do you have one-on-one interviews? Is that dealt with completely from your office here? What is the process?

Ms Watson: Some time ago last year we decided that we would try to determine the reason why there were not as many applications coming to the board as were originally envisaged. To do that, we needed to get out into the system and

listen to the kids and the service providers. So we decided that we would have a hearing, in the sense that we would go to the physical structure in which the young person was in custody. When an application comes to the board, unless it is completely out of our authority we will do a review in the form of a hearing in the custody facility.

Mr Owen: So if the request is from Barrie, you go to Barrie; if the request is from London, Ontario, you go to London, Ontario.

Ms Watson: Yes.

Mr Owen: And you now have staff going there?

Ms Watson: No, there is not staff that goes other than the custody facility staff.

Mr Owen: And they go just for the hearing.

Ms Watson: The custody facility staff are there. The young person is there.

Mr Owen: Okay, right.

Ms Watson: And then I will go and/or a member of the Custody Review Board will also go.

Mr Owen: That is what I am saying. Somebody from your staff will go and sit there with the people who are helping from that institution or that home. Do you do any in-depth to look at the family? Do you talk to schools or are you getting all your information when you go there?

Ms Watson: Essentially, to get any information ahead of time means that you are really possibly prejudicing your outlook before you hear from the young person and/or the system, and so we tend to go there and access the file that is in the custody facility with the young person. With that, there is his previous involvement with the Young Offenders Act, his records are there, his school records, there is usually a predisposition report in the file that you can access. Just more recently there was a hearing that I did in Sudbury involving this young person whom I referred to earlier. That hearing was a week ago Friday past and I am still doing telephone checks on some of the aspects of the placement decision before I actually make the recommendation.

So it is a case of giving the young person the opportunity to explain his reasons for the request, to give the provincial director and/or his designate to explain the reason for his decision and then, if someone is not there—and usually, more likely they are not all going to be there—then consult with those people after the so-called hearing to verify or clarify anything.

Mr Owen: What is the background, academically and experience-wise, of yourself and the others who are doing this kind of hearing?

Ms Watson: Mine is high school, a business background; Keith is a high school teacher with a master of education, I believe.

Mr Owen: Okay, my next question, then, and this is really what I am leading up to: Would this type of consultation not be available from the probation officer?

1420

Ms Watson: Well, again, the probation officer is in the system. He or she is a civil servant who is working within the system.

Mr Owen: If a social worker is going to have access to all of the information that you have available to you, the social worker—

Ms Watson: Participates.

Owen: —has often seen the family, has often been in touch with the school, has sort of an even more complete understanding of the person, the personality and the problem.

Ms Watson: I really do not think I can clarify what I said earlier any better than I have. I think the purpose or the original intention of the Custody Review Board is to ensure that the system meets the philosophy of the YOA, that the kids are not lost in the bureaucratic maze and that the needs of the young person are addressed at the same time that the system protects society.

I am not sure who can answer that—perhaps Anne could, better than I—the need for an outside mediator, if you like, such as the Ombudsman, for other matters involving the provincial government. I cannot answer it any more effectively than I have.

Mr Owen: It is just that I think that most social workers and probation officers would think that they are trying to do the very same thing that you describe as your mandate.

Ms Sheffield: As I understood your question, the probation officer usually either is the provincial director or reports to the provincial director in our system. So the probation officer or the social worker is involved in this process that we are describing and actually is one of the parties, if you will, who appear before the board and explain their perspective on the decision-making.

In our Ministry of Community and Social Services, the probation supervisors are almost all provincial directors appointed for the purposes of the YOA. There are a few other positions as well, depending upon which region we are talking

about, who also serve as provincial directors. But they are all within the probation system and so to that extent they are involved in this hearing process.

Mr Owen: I am concerned that we do everything we can to help the young offender. I am concerned that we do everything we can to try to protect the interests of the young offender, to have him advance out of his problems and so that there will be no recidivism involved. But I am having trouble trying to appreciate why you are required to do it when I believe the probation officer is there to do that very same thing.

Mr Quigg: Mr Owen, let's pretend for a minute. You are a young offender and I am your probation officer.

Mr Owen: I have been a probation officer.

Mr Quigg: Okay. You as a probation officer then say to the young offender, "You are going to be residing at X custody facility at the provincial director's direction." The young offender says to you: "You are my probation officer. I am forced by the court to report to you. You may not necessarily be advocating on my behalf." He may look at you, whether it is true or not, from an adversarial position.

What does he do, with regard to an additional kind of recourse, to get a different opinion with regard to that custody placement that you have recommended?

Mr Owen: I never had that problem, because I do not think they ever misread what we were trying to do for them. But if it did develop, I would imagine as a social worker that I would report it to my superior and say: "There is a difficulty of communication here. The chemistry is not right. Let's get another social worker," because the youngster is going to be helped by an ongoing relationship. His problems are not going to disappear because of a 30-minute or one-hour hearing. It is going to be resolved because he is trying to face up to his problems and his difficulties of long standing.

I think of the people who are in our homes in Barrie who are working with the young offenders, and I can see that they are trying to do the same thing on a long-term basis.

I think it is great to have this if it is needed, but I am having difficulty coming to grips with the particular need and that it is not a duplication of something that is already there.

Mr Quigg: It gives the young offender the perception, which is important, that somebody out there is advocating on his or her behalf who is not necessarily working with him or her.

Mr Owen: How many a year did you say you have of these hearings?

Mr Quigg: Approximately 28 over the last 12 months.

Mr Owen: For the whole of Ontario.

Mr Haggerty: Did you do a follow-up on that?

Mr Owen: I was just going to my last part. Of those 28, have you any idea how your figures would be that it is working because they have had the opportunity of availing themselves of this, as opposed to the people who have not availed themselves of the service? In other words, is there any difference in the rate of recidivism going this route or not going this route? Or have you had a chance to even look at that yet?

Ms Watson: It is not something we have looked at. I am aware that in discussions with staff, for example, at the secure treatment facility at Syl Apps Youth Centre, there is just not the money there to track the young persons who have gone through the secure treatment program to see whether it has had an impact on the recidivism rate.

Mr Owen: So we do not know.

Ms Watson: I think that is all in the area of research that, again, the whole question of funding comes into: At what point is the system going to make the funds available to do that kind of tracking and research? It is difficult to answer your questions because I think probably—I have from time to time shared your perceptions so far—I still think—

Mr Owen: You are being very honest about it all and I appreciate that.

Ms Watson: I still think the board, having been involved with it since its inception—well, not since its inception; I was first appointed in 1986—I really do not think the board has functioned. I certainly do not think that I did not understand the process of communicating with the various facilities and the provincial directors. I still have difficulty with the structure of the MCSS. I almost feel I need to go to university to get a degree to simply find out how Anne relates to legal services. So I found it very difficult to make a fair assessment of the role or needs of the board.

I would very much hate to see something thrown out or discarded because it has not proven a need in a time frame that I believe has not been sufficient to determine that.

Mr Owen: How much longer do you think it might need before somebody would do an appraisal?

Ms Watson: My term is for another two years, I believe, and I certainly would be more than willing to track now each of the applications we have received and try to do a profile on the young offender and the implications. But more important, I think it is really to get out there to the various custody facilities, the probation officers. I was not aware that you had come from that background. But certainly in Sudbury, in talking to some of the probation officers, the ones who have had some dealings with us have said that they have found it a very positive experience for the young persons to reinforce that the system is in fact trying to meet their needs.

But you know yourself how many young people will move from one part of the province to another, and they will go from one probation officer to another probation officer, all of whom have very large case loads. The final moves with the young person, as you are well aware of—somewhere or other some system has to be there to ensure that the system is meeting that individual child's or young person's needs. I guess I really cannot add anything more to that.

1430

Mr Owen: You could possibly consider getting in touch with the faculty of social work here. They might have someone who is looking for a thesis topic who would be happy to put together some of the material and information you have. If you were able to make arrangements to make it available, somebody would probably be quite anxious to delve into it.

Ms Watson: Certainly I know when we were doing the secure treatment admissions, I was very interested to find out the kinds of long-term results from the secure treatment program, which I think is absolutely wonderful, but unfortunately the costs and the accessibility should not be through the young offenders system. It should be available through some other process.

The Vice-Chair: Does the board keep track of the young persons that it reviews?

Ms Watson: No, we do not. We have not thus far, but the ones I have done myself these past few months are ones I am going to be tracking, yes.

The Vice-Chair: Do you have the statistics that we requested this morning?

Ms Watson: Yes, I do. Anne can speak to the facilities and the number of beds.

Ms Sheffield: You asked, first of all, for the number of facilities, broken out by secure and open and also broken out by our north region and the southern part of the province and, as a

supplementary question to that, the number of beds that these facilities would represent. Jane Rogers from our staff worked during the recess to compile these statistics. We have been able to answer most parts of this question—not all, as I will point out to you.

Dealing first with the secure or locked facilities, the Ministry of Correctional Services has 18 such facilities in the province, representing 712 beds. Of these, five facilities, or 28 per cent of the facilities, are in the northern region and 200 of the beds are in the northern region, so 28 per cent of Ministry of Correctional Services secure or locked beds are in the northern region.

The Ministry of Community and Social Services currently has 10 secure facilities representing 240 beds. Currently we have one functional facility in the north representing 10 beds. As some of you may be aware, we have been developing, since the proclamation of the Young Offenders Act, a changed secure system, moving from the old system of centralized, large training schools to a system of smaller secure facilities located across the province, the principle being to provide the service closer to where kids live.

So we are currently building, or trying to build, three new secure facilities in the north region, in Thunder Bay, Kirkland Lake and Sault Ste Marie. There was a question earlier about the Sault Ste Marie situation, which has encountered some significant problems.

The Vice-Chair: Which ministry is doing that?

Ms Sheffield: The Ministry of Community and Social Services.

The Ministry of Correctional Services has 50 open facilities, that is, the group home style of locked facilities, representing 549 beds. Of these, seven are in the north region, representing 76 beds, and 13 per cent of their open facilities are in the north.

The Ministry of Correctional Services has 75 what we call specialized or dedicated young offenders open facilities throughout the province, representing 481 beds. As I think was mentioned earlier today, the Ministry of Community and Social Services also has a series of group homes that we purchase beds from on a purchase-of-service arrangement when these 75 are fully used.

One of the pieces of information that we could not get for you in the recess but we will certainly try to get for you later if you wish is a breakdown of our open facilities in Community and Social Services, how many of those are in the north. It is

possible to get the number; it is just that the right person was not at the end of the telephone to help us with that.

The other question you asked was with respect to the number of custody dispositions in the province, what percentage are from the north. We were able to access only the Ministry of Community and Social Services data, not that of the Ministry of Correctional Services, as I think you were told this morning. The two people we deal with from Correctional Services are both off ill today, so we were not able to get the figures for their ministry, but for Community and Social Services, with a November 1989 average daily count in all YOA facilities, of 748 young people, 19 per cent of those are from the north region.

Mr Kozyra: Just to put that in perspective, the northern population is about nine per cent of Ontario's population.

Mr Owen: I was going to ask that.

Ms Sheffield: I am not sure. It depends which counties and districts you choose for this. We did not match it up against the populations for the counties that our north region serves, but I can check on that as well.

The Vice-Chair: Do you have anything further?

Ms Sheffield: No, that is it.

The Vice-Chair: I have one question. Perhaps it has been asked and answered. Of the 28 reviews that you have done, how many of them were from northern Ontario?

Ms Sheffield: You did not ask me that this morning, I hope.

The Vice-Chair: I had to leave something for this afternoon. Have you got a supplementary, Ray?

Mr Haggerty: No, I have a question.

The Vice-Chair: While they are trying to figure that one out, you go ahead.

Mr Haggerty: I did not know that you had my name down. I thought you did before the break.

The Vice-Chair: I have had it down a couple of times.

Mr Haggerty: Yes, I know that.

The Vice-Chair: Mr Kozyra is on the list too. Your questions have all been asked, have they not?

Mr Kozyra: Just about. Maybe they were asked while I was away.

The Vice-Chair: They probably were, but you go ahead and ask them again.

Mr Kozyra: I just want to follow up on the number of requests for review. We seem to be dwelling on that, but it is of interest. I am just wondering about this low number, whether there is a kind of mentality that still might be out there among the young offenders themselves, that they may feel this request for a review may be perceived by someone higher up, some authority, as rocking the boat, and they may fear reprisals, and that may also be a factor in discouraging them from going. Because 28 out of several thousand does seem low unless the whole system is working so well—and you had indicated that there were parts that were not and you wanted the numbers to increase. Is there some possibility of that, or is that really off base?

Ms Watson: No, I do not think it is off base. I think possibly that is one of many factors that—

Mr Kozyra: Because they are youngsters, and they may very well fear. They do not know.

Ms Watson: Yes. Some of the young persons, as you can appreciate, may have had no prior involvement with the law at all, have no knowledge of how the system works. On the other hand, you can go to the other extreme, where the young person has a great deal of experience and cynicism.

I do not think I could generalize, but certainly I would include that as one of them, and certainly it is one of the things—I know I spoke to the director of the Syl Apps Youth Centre in Oakville, who felt that the young people really do not know about the Custody Review Board, just as I have spoken to other service providers who feel that.

For example, in the north recently when I spoke to Correctional Services staff, they in fact use the Custody Review Board to facilitate negotiating an agreement to secure a bed in another region by saying, "If you can't help in that area I guess we'll have to try to access the Custody Review Board." They have told me that in fact the Custody Review Board has been helping them to a certain degree by simply existing. Right now there is a lot of negotiating taking place because of the lack of beds in certain areas, and one area will negotiate to try to secure a bed from another area.

1440

Mr Kozyra: My next question is one of a general nature. Over the past year there has been a lot of focus on and criticism of the Young Offenders Act and a lot of pressure from the general public across Canada for the federal government to do something about bringing

in—when they say amendments they really mean tougher measures. That is how I interpreted what the general public was asking for.

I am just wondering about your opinion as to how this will translate on the Ontario scene, specifically in regard to the review board, but also in regard to just the general young offenders situation in Ontario. Is it too early to say that? I know it is speculation, but—

Ms Watson: I am not sure that I can answer that with any sense of authority or knowledge. My understanding of the proposed amendments to the YOA are with regard to first and second degree murder, extending the disposition to a three-year term now with a two-year probationary period. I would think Anne would possibly be the better person to respond to that.

I do not see that it would necessarily impact on the Custody Review Board in any way other than that a young person who might be in a secure facility for a three-year disposition does have the right to access the review board for a review of the placement.

Mr Kozyra: Would either you or Ms Sheffield care to comment on whether the public sentiment in this case—and you have experience with seeing a young offender from a somewhat different perspective—whether the public sentiment and what it will result in in these amendments is eventually going to, quote, do the right thing in tightening these things up as they translate on to the young offenders, or we will bow to public pressure but in the long run do more harm than good? It is a controversial issue, and I know it is a personal comment, but from your perspective—you could offer us a different perspective on it perhaps, or maybe the same one and justify the way we are feeling, and I do not know if we are unanimous or not.

Ms Watson: I think I would like Anne to respond to that.

Mr Lupusella: I think the better question is if the number of—

Mr Kozyra: Are you judging my questions?

Mr Lupusella: No. I think that the number of appeals is going to increase as a result of certain changes that might take place in the Criminal Code, so maybe that is a natural question based on his concern. If the law is going to be changed on these lines, maybe the number of appeals is going to increase, and therefore the board will be affected by it.

Ms Watson: I will let Anne respond to the initial question, and then I will try to just add my two cents worth.

Ms Sheffield: I have worked quite closely with the federal Department of Justice and other provinces on the amending bill, so I am quite familiar with its provisions. I guess I would have to support what Lorraine said earlier in response to your previous question, that on the face of it at least, the latest proposed amendments to the Young Offenders Act should not affect directly the work of the Custody Review Board, and I guess my early assessment is that it would not affect the work of the Custody Review Board indirectly either.

The proposed amendments are quite limited in scope. As Lorraine said, they deal primarily with young people who have been charged with murder, dealing with the possibility of transfer to the adult court and an apparently lengthened disposition if the young person is dealt with in the youth system. So it is a bill that is very limited in its application.

Ms Watson: If I could just add my two cents to the supplemental question about increasing the numbers of applications, I do not want you to

Ms Watson: Essentially, I do not think there is an advocate per se. I think in fact the board itself is an advocate for the young person's rights.

Mr Haggerty: So, in other words, it is not too legalistic?

Ms Watson: No. It was structured that way, that it not be the youth court, that in fact—I may be speaking out of turn here and Anne can correct me—but certainly I do not think it is outside the parameters of the board that under the optional review process, which can only be accessed through the youth court, if a young person, for example, came to our attention through an appeal, if the review board felt that an optional review of the disposition should be examined, I do not think it is outside our mandate to remark on that within our recommendations.

Because of the short custody dispositions that I have seen, it has not really come across in any of our applications, but certainly I think that is a possibility. Particularly if there is more and more pressure on the courts to give longer dispositions, I would think that may in fact become an issue in the future.

1450

Mr Haggerty: In the background papers that we have here presented by research, there is mention of the Ombudsman. What role do they play? Have they been involved in any of the hearings?

Ms Watson: They have been accessed by some of the young offenders but it is not a

significant number. Certainly, the young persons are informed of the Ombudsman as one of their review mechanisms that exist in the province of Ontario, but I think the emphasis from the Ombudsman's office has been to encourage them to access the review board.

Mr Haggerty: Who would refer them to the Ombudsman then? The director?

Ms Watson: Yes, the same persons that tell them about their rights, including the Custody Review Board and the Ombudsman, the outside mediator. I guess it is again on intake. But the emphasis and the intent of the legislation was that the custody review would involve the young offender as opposed to other issues outside the youth—

Mr Haggerty: These youth offenders now, though, once the judge brings down a decision and it is perhaps suggested that they should be placed in one of the institutions or one of the homes, I have some indication that nobody advises them of their rights at that time, saying that they do have a right to appeal the place of stay.

Ms Watson: There has not been anything that has been proved to me that in some areas they are not doing this. It is just that it is required under both acts that the young persons be informed of their rights at the same time they are informed of their responsibilities within the custody facility.

The unknown is how they are presenting that to the young persons and how well the environment is structured in which they are being informed of that, that they absorb and understand and appreciate what the system is to them.

Mr Haggerty: The next question is, when you file an annual report, and I presume that you do file an annual report, to what government head do you send it? You have two there.

Ms Watson: It would be to both ministers.

Mr Haggerty: And that is tabled every year to the ministry. Is there a deadline on that?

Ms Watson: I think it has been very informally done thus far.

Mr Haggerty: But it is in a written form, though, is it?

Ms Watson: Yes. Because I have only been chair since August of this year, I am not really familiar with what, if anything, has been done in a written manner to the ministers, but yes, we are required to submit annual reports and more, if necessary, to the minister. It is something that I am looking at right now.

Mr Haggerty: Do you suggest any recommendations for changes in policy or guidelines in this particular area? Have any of the previous chairmen presented their views in this particular area?

Ms Watson: No, they have not.

Mr Quigg: There seems to be a concern among members here about the lack of numbers. I want members to be aware that there a number of options young people have in custody to access some kind of change in where they are. In each of the hundreds of facilities we have in this province, there is an internal complaints group.

Very often, if young offenders have a complaint about what is going on in the facility they may be in, they will go to that group in the facility and try to get a resolution. If they cannot, they may go to a probation officer or an institutional liaison officer in the facility. They may talk to a social worker in the facility and try to get what is bothering them resolved.

They know or they should know that they can access the Ombudsman's office. We also have in this province the Office of Child and Family Service Advocacy. Then, of course, after those things are accessed, you may get to a Custody Review Board. We are not at the beginning of the process; we are pretty well at the end of the process. If it all runs smoothly, it is hoped that we do not have that many applications because we hope that the problems are resolved.

Mr Haggerty: In the area of the training schools—I do not know—they are not in existence any more, are they?

Ms Watson: No.

Mr Haggerty: What type of training programs are available then for the youth offender? Where are they getting their education, and can you assure the committee here that they are getting education?

Ms Watson: I will let Keith, because he is involved in the education process, explain about the Education Act.

Mr Quigg: I work as a co-ordinator of adjustment and attendant services with the board of education, and that means that there is some knowledge with regard to what young people can access educationally. It depends upon the facility, but if you are looking at secure custody facilities, in most of them there is some form of a classroom.

Under the general legislative grants of this province, section 25, secure custody facilities on a cost-sharing basis receive half the funding from the Ministry of Community and Social Services

and half the funding from the Ministry of Education with regard to that section 25 class. It has a maximum capacity of eight kids and it is in most secure custody facilities. In open custody facilities, local boards of education may provide the classroom at the open custody facility or will provide the classroom in a local school, and those kids will leave the open custody facility and go to that school.

So in all cases there is an educational component for all kids in custody. It varies on where they are with what they are getting. The young people in secure custody facilities usually take courses offered by the Independent Learning Centre from Toronto and they work on a credit at a time towards getting the 30 required for their secondary school diploma. The kids who may be in an open custody facility who go to a board of education school would be working at that board's regular program and not access that ILC alternative.

Mr Haggerty: I will just follow up on the education. Are you satisfied that they are getting a reasonably good education under these circumstances? What is your personal assessment?

Mr Quigg: My personal assessment is that the system is providing the best it can with what it has got. I am pleased with what I see in that line. The difficulty that occurs is when the kid's custody placement is over and the kid returns to his home in his community. How open is the school to saying: "Welcome back. We know you've been a problem in the past, but we'd like to have you in our school?"

This is the problem of accessing education for kids who have been in custody and come out of custody. It is nothing to do with the custody. It is good; it really is good. In open and in secure the educational component is good, but when the kids, after doing the crime, have done the time, getting them back into the community school is often the problem.

Mr Haggerty: There is a transition problem then. Is that what you are telling me?

Mr Quigg: You know it is hard to welcome back somebody who has been a real problem in your facility. Say you are an administrator and you have had parents call you about the behaviour of one kid. It is hard to welcome that kind of kid back in. Now there are alternative programs that boards of education can provide and do provide for young people who may get themselves in that position. But the problem is after custody, not during. It is good while in custody in most cases.

The Chair: Over the course of the past year, how many days would you spend on hearings? How many days would you be in hearings over the past year?

Ms Watson: I could not comment on the number that I personally attended over the past year without checking the record.

The Chair: Roughly. Would you not have a—

Ms Watson: Thirteen possibly.

The Chair: Thirteen. How many would you have over the past year?

Mr Quigg: I would take a look at about 12 days a year.

The Chair: Twelve days a year. Do you have any idea what the budget is for 1989-90? Is it more than 1988-89?

Ms Watson: Actually, you had a question relating to the budget from this morning too. Nancy Lunney, the manager, might be more appropriately able to answer your questions on budget.

1500

Ms Lunney: I believe the question this morning was related to 1986, and we have looked at the figures for that year. There were 27 reviews in 1986 and 26 secure treatment admissions committee reviews, for a total of 53 reviews. When we averaged the total budget—and this is salaries, benefits, the entire kind of budget for that year—it turned out to be about \$705 per review. In 1989, there were 21 hearings and, depending on where the hearings were, you can minimally appreciate that it might be one day, but in some cases, if you are travelling a fair distance, it might have been more than that.

Since 3 April 1989, the Custody Review Board is no longer hearing secure treatment, so 1990 will be the first year that we will have clear figures on actual applications for custody review. The applications for information from the training school advisory, the leftover from the training schools where they are closed and people want to access information, are done through the office of the Custody Review Board.

The Vice-Chair: Your staff shared with some other agencies. Does anybody have any idea what your 1989-90 budget would be?

Ms Lunney: We do not anticipate a diminishment in staff, so the budget would probably be reflective of the 1988-89 one, with the inflationary add-on. Presently the other boards that are serviced by the existing staff are the Child and Family Services Review Board and the Soldiers' Aid Commission. The increase in applications in

the other boards may look at a realignment of staffing in the next budget year.

The Vice-Chair: Under classification of services, you spent more in services than in supplies and equipment. What would those services detail? It was \$19,000 in 1988-89, \$4,000 in 1987-88 and \$12,000 in 1986-87. It seems like a substantial figure to me, and there should be some idea of what those expenditures are.

Ms Lunney: Those expenditures would be a rollup of the per diems and would include sessions where the board would meet for orientation sessions of new members. As well, on occasion the board has accessed independent legal counsel. That figure would be a cumulative of those amounts.

The Vice-Chair: The salaries and benefits would be for the staff under the other agencies. Is that right?

Ms Lunney: Yes.

The Vice-Chair: I was wondering, Mr Quigg, did you need a leave of absence from school to do the hearings, or does your school board have any problem with your activities on the board?

Mr Quigg: When I got appointed to the Custody Review Board, I went to my director of education and told him that had happened, and he went to the trustees of the board and got approval from the trustees that when I was called by the CRB on hearings or on board meetings, I would be excused from regular duties with my employer. I am in the position where I have worked board-wide in the central office and therefore am not responsible for a specific classroom of students and have the flexibility to attend either a hearing or a board meeting. But my board is aware of my involvement.

The Vice-Chair: You have not got to an area superintendent yet.

Mr Quigg: I have a very understanding boss. My bosses look at my being involved with this as something good for the Norfolk Board of Education, and there is no doubt that in the job I have with the board, the knowledge I have gained through my involvement has been beneficial to some of our kids. I have an understanding employer.

The Vice-Chair: That is super. Would you recommend one or two additional appointees for the north? What would your recommendation be? We would like to put something in our report, but we would like to kind of get your feeling on it. What would be reasonable? I know it allows 15.

Ms Watson: I would certainly hope that there be equal representation, and if not equal representation, more representation from the Ministry of Correctional Services, because it is a joint board available for both phase 2 and phase 1. Certainly I would like to see, because of the north and the remoteness of some of the areas, that there be at least one if not two members from the north, as well as that the geographic considerations be taken when appointments are made to the board. We seem to have a good cross-section in the southern areas right now. Certainly we would benefit from that.

The Vice-Chair: I want to thank you for taking the time to appear before us. It has been an excellent exercise. Tomorrow we are dealing with the Ontario Board of Parole, so we will have some more insights on other aspects relating to the Custody Review Board. Thank you very much for coming before us.

Ms Watson: I would like to thank you, if I may. This may not be appropriate this time, but from a personal point of view, I very much enjoyed and appreciate the fact that government does have this process available to it. I think too, for the purposes of the Custody Review Board and the role it was legislated to perform, that it has been a very good review for our purposes, because we have had a lot of questions. It has made us think about our procedures, the fact that we have not tracked—it has identified some areas that we have overlooked. From my perspective, both personally and as chair of the Custody Review Board, thank you very much for the opportunity.

The Vice-Chair: Does the committee have anything else it would like to discuss? If not, we will adjourn until tomorrow morning at 10 o'clock for further briefings.

The committee adjourned, at 1509.

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Legislative Assembly of Ontario

Standing Committee on Government Agencies
Ontario Board of Parole

Second Session, 34th Parliament
Thursday 22 February 1990



Speaker: Honourable Hugh A. Edighoffer
Clerk of the House: Claude L. DesRosiers

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Thursday 22 February 1990

The committee met at 1104 in room 228.

AGENCY REVIEW

ONTARIO BOARD OF PAROLE

The Vice-Chair: I will call the standing committee on government agencies to order. This morning we are dealing with the Ontario Board of Parole and we have its chairman Mrs Sheila Henriksen. Perhaps Mrs Henriksen, if you would like to proceed and introduce the people whom you have with you.

Mrs Henriksen: Thank you very much, good morning, committee members.

I would like to spend a few moments outlining in general terms the role of the Ontario Board of Parole in the criminal justice system. The fact is that, unless they are familiar with the correctional system, very few members of the community have a clear understanding of parole or the processes involved in it. Since I took this office almost four years ago, I have witnessed public pressure for government agencies, including this board, to be more open about its operations. I appreciate your invitation to appear before you and welcome this opportunity to share with you information about the board and its role in the criminal justice continuum.

But first, please allow me to introduce my colleagues here with me today. Ken Sandhu, to my left, is the executive vice-chairman of the Ontario Board of Parole—Ken is primarily responsible for the board's administrative affairs; and Murray Chitra, to my right—director of legal services for the Ministry of Correctional Services and legal counsel for the board. Also with us today, though not participating directly in this review process, is Mrs Beverly Wilkinson, a community part-time member, who is in her sixth year on the board and who is available to answer any questions that you may have about her experiences in our agency. Mrs Marian McGuire is also here; she is the senior policy advisor of the board.

The Ontario Board of Parole has the singular distinction of being the oldest parole board in Canada, as well as the largest provincial board. Established in 1910 as the Ontario Parole Commission, its powers were limited to advising federal authorities on early release during the indefinite portion of sentences served by provin-

cial offenders. With the passing of the federal Parole Act in 1959, the Ontario board was able to authorize release instead of simply recommending it. In 1978 full authority for parole decisions regarding all provincial offenders was delegated to the board, a mandate which it pursues up to this day.

Parole is the conditional release of an inmate who has been sentenced to a term of imprisonment in a correctional facility, to serve part of that time in the community with specific conditions and under supervision. Following the release of the report of the Canadian Sentencing Commission in 1987, which called for the abolition of full parole in Canada, the board took a very hard look at its mandate, its current and future operations. The result in June of 1988 was the release of our mission statement, which states:

"The Ontario Board of Parole is an integral part of the Canadian criminal justice system. It is responsible for the supervised conditional release of adult offenders sentenced to Ontario provincial correctional institutions. The community is represented on the board and shares responsibility for making independent, fair and objective decisions within legislated criteria. The board contributes to public safety by assessing risk, and by providing offenders with hope and the opportunity of becoming responsible members of society."

The Ontario Board of Parole is one of three provincial parole boards in Canada, the other two being the British Columbia Board of Parole and the Quebec Board of Parole. The Ontario board takes its authority from the provincial Ministry of Correctional Services Act and its regulations, as well as the federal Parole Act, which specifies the three criteria for use in parole-granting decisions. Because of a split jurisdiction of criminal justice in Canada, the Ontario Board of Parole is only responsible for all adult offenders in Ontario who are serving sentences of imprisonment of two years less one day.

Inasmuch as sentence length is an indicator of severity of offence and the chronicity of offending, the Ontario board deals with the less serious type of offender population, on the whole, in comparison to its federal counterpart, the National Parole Board. But it is not without its share of

difficult cases. In the majority, cases appearing before the board are serving sentences for property-related offences. Although the board does not deal with young offenders, that is persons under the age of 18 years, some offenders who appear before the board are graduates of the young offender system.

The Ontario Board of Parole is a decentralized organization, having five geographic regions covering the province. Regions in close proximity to the Metropolitan Toronto area deal with high case loads, while the sparsely populated northern region, which conducts less than 10 per cent of all board hearings, must contend with great physical distances in getting board members to parole hearings.

The chair's office is located in Toronto and includes myself as chair, the executive vice-chairman and three administrative management staff, who function as the headquarters of the board. Together with the five regional vice-chairmen in charge of each of the board's regional offices, 11 full-time members distributed across the province conduct parole hearings and case review meetings throughout the year. All of the regional vice-chairmen and most of the full-time members on the board are civil servants who come to the board primarily from the Ministry of Correctional Services and usually return to that ministry. Access to experienced members in the fields of penology, social services and administration as a result of these appointments is an advantage to the board.

Aside from the board's 16 members, myself and the executive vice-chairman, who are civil servants and crown employees, the board has 105 community part-time members who are appointed from various walks of life and professional backgrounds, such as corrections, psychology, social work or other related disciplines. Of these 105 part-time members, 51 are female, several represent racial minority groups, 18 are francophones and six are aboriginals. These members lend strong community representation to the board's composition and bring a vested interest in the safety of the community to the parole decision-making process.

The Ontario board is unique in that community members participate in every parole hearing conducted with offenders under the jurisdiction of the board. Community part-time members are selected for appointment to the board from localities across the province. In the interest of economy, they are generally assigned to participate in hearings in the correctional institutions nearest to their place of residence.

All members, both full-time and community part-time, are appointed by the Lieutenant Governor of the province through order in council. Community members are paid a per diem, which is currently \$125 and provide an average of six to 10 days of service to the board per month.

The board is an administrative tribunal in which I, as chair, report to the Minister of Correctional Services. The board, however, relies heavily upon the ministry for administrative and professional support. We depend upon the ministry's professional field staff to carry out preparole community investigations, to gather required documentation for hearing purposes and to provide community supervision and monitoring of parolees. We enjoy an harmonious and supportive relationship with the ministry largely, I believe, because we have worked together to set out our individual roles and responsibilities in a memorandum of understanding between the minister and myself and an administrative agreement between the ministry and the board.

Parole decisions in Ontario are made by a quorum of board members usually consisting of two community part-time members and one full-time member who chairs the hearing. Legislation allows for the granting and denying of parole in the absence of the offender. However, as a matter of policy and practice, the board holds an in-person hearing with each offender in one of the province's 46 correctional institutions before granting or denying parole. In some exceptional cases, such as in a follow-up hearing on a deferred case, the board grants parole at a case review meeting without the attendance of the offender. However, as a standard practice the board can only deny parole at an in-person hearing with the offender.

Under the existing legislation provincially sentenced inmates are eligible for consideration for parole after serving one third of their term of incarceration. While every inmate has the right to be considered for parole, she or he does not have the right to be granted parole; parole is a privilege.

Inmates sentenced to six months or more are automatically scheduled for an in-person hearing before the board. Those serving sentences of less than six months are required by legislation to apply to the board in writing. Of the cases considered by the board in a given year, about three quarters are sentenced to six months imprisonment or more, and one quarter to under six months.

Although we are the largest provincial parole board in Canada, our expenditures for the last fiscal year only amounted to \$3.7 million. During an average year the board holds around 9,000 institutional hearings and approximately 1,500 case review meetings. At initial or review hearings, the board is authorized to arrive at one of three decisions in quorum: to grant, to deny or to defer the decision until such time as additional information is present to proceed further. On the whole, the board grants parole about as often as it denies parole. In 1988-89, the board granted parole slightly more often, with 3,595 grants and 3,076 denials.

The board releases between 3,400 and 3,700 parolees every year and actively monitors the ministry's supervision of these parolees. Anywhere from 82 per cent to 85 per cent of those released complete their terms of parole without violations. The board is empowered to suspend and revoke parole where it believes that there are reasonable and probable grounds to do so. Approximately 18 per cent of those released are revoked prior to completion of their terms of parole. Of this 18 per cent, about 16 per cent are revoked as a result of violations of parole conditions, and the remaining two per cent as a result of further convictions, charges, or revocations at the request of the inmate.

The parole consideration process followed by the board is probably not unlike that followed by other parole boards and consists of two basic phases.

During the first phase, the quorum reads a number of source documents which detail the offender's criminal history: the nature and extent of the current charges; behaviour while incarcerated including misconducts and progress in available institutional programs; social background and current family situation; release plans including residence, employment and relevant treatment programs. Individual notes are taken by each member who then discusses areas which need clarification or elaboration at the hearing. On average, this reading phase takes about one hour per case, depending on the extent of the material to be reviewed.

The second phase consists of the actual hearing which usually occurs on the same or subsequent day of the reading of the case. During this phase of the process, the offender is interviewed and questioned by each of the three quorum members. The hearing affords the offender the opportunity of providing additional information and clarifying matters for the board.

Once the hearing is conducted, the offender steps out of the interview room while the quorum discusses the case and arrives at a decision. The decision to grant or deny parole need not be unanimous and a majority of vote carries the decision. At this point, if the decision is to grant parole, special conditions are also discussed and set. The offender returns to the room and is immediately delivered the decision, orally and in writing. This hearing phase of the process normally takes 45 minutes to one hour. I might add that the offender is also given the reasons for the decision orally and in writing.

1120

Before the offender leaves the hearing room, the board advises him or her of the process for requesting a review of the board's decision. The board's review mechanism is entrenched in legislation whereby inmates who are aggrieved by a board decision or board process may request a review by the chair. Requests for clarification of a decision or for a further hearing are handled in the field by the regional vice-chairmen. In inmate grievances, I, as chair, may order a new hearing or uphold the original decision of the board. On average, we receive two offender requests for review per week.

Offenders also have recourse to voice their dissatisfaction with a board decision or process with the Ontario Ombudsman. In the five cases investigated by the Ombudsman since 1986, all have been resolved to the satisfaction of the Ombudsman and his client. Four appeals were withdrawn by the appellants and one was ruled in favour of the board by the Ombudsman.

The board has introduced procedural safeguards to try to balance our interest in natural justice and fair processes and pressures for an expeditious system. The offender is given a minimum of 48 hours' notice of the scheduled hearing. Most are aware of the process from having reviewed the board's pamphlet *Preparing Yourself for Parole*, which is available in French and English. Many have also viewed the board's video by the same title, which is available in English, French, Ojibway and Cree. All have been interviewed and briefed by a probation and parole officer providing institution liaison services. Hearings are conducted in the offender's choice of either English or French. Translations are also used whenever an offender requests it.

The hearing process is not adversarial; it is an informal process by judicial standards. It has been designed and legislated this way largely because of the brief term of incarceration of the offender population. Given the fact that the

average aggregate sentence in 1988-89 was 75 days for men and 47 days for women, it is essential that the board provide an expeditious hearing, appeal and decision-making process.

Despite our attempts to reduce the judicialization of our hearing process, some offenders feel more comfortable having the support of a representative at their hearing. Offenders are permitted to have an assistant at the hearing. Some choose to bring their lawyers.

The advent of the Canadian Charter of Rights and Freedoms and the results of various litigation proceedings elsewhere in the country have caused the board to reflect upon its responsibilities as a decision-making body. Three criteria, as described in the federal Parole Act, constitute the basis for consideration of release on parole. They are: The inmate has derived the maximum benefit from imprisonment; the reform and rehabilitation of the inmate will be aided by the grant of parole; and the release of the inmate on parole would not constitute an undue risk to society.

The board attempts to balance its discretionary powers as an administrative tribunal with the growing emphasis on accountability for its decisions before the public and before the offenders whose parole cases it hears. While the board has followed since the early 1980s policies adapted from legislation as well as a set of standardized decision-making procedures, there has been ever-increasing pressure to articulate more thoroughly the process leading to the final decision, from source documents through to the hearing and quorum discussion.

The board has recently enhanced its policy on decision-making, which breaks down the legislated criteria into discrete factors for consideration. This policy is expected to promote more consistent and standardized decision-making. We will also be introducing a standard practice of audio-taping parole hearings. This will no doubt improve our recordkeeping practices, which will in turn contribute to more effective review and evaluation processes.

Another thrust of the board is in the area of information-sharing. Initiatives are under way to obtain access to documents such as judges' reasons for sentencing and crown briefs, as well as to negotiate a process for the sharing of case-related information across parole jurisdictions within Canada.

Information-sharing with offenders has been given increased attention, too, with the implementation in 1988 of the Freedom of Information and Protection of Privacy Act in Ontario. The rights of the individual to access personal

information kept by a government agency such as the board has heightened our awareness in the area of consistent, accurate and comprehensible file documentation. During 1989 the board responded to all 21 requests from offenders for access to parole board records.

In recent years the public has been calling on the board, along with other agencies of various levels of government, to be more responsive and open to members of the public. The Ontario board, along with our federal counterpart, has had to battle public misconceptions about parole as an easy out for dangerous criminals. We have had, for several years now, a public education program consisting of speaking engagements before interest groups such as church groups, ratepayer associations, student bodies, local television and so on, to try to dispel some of the myths surrounding parole. Still, few people realize that an inmate on parole serves the full sentence imposed by the court.

Members of the community, especially victims, have voiced considerable frustration with the criminal justice system, including the board in what they experience as a fragmented and unresponsive system. The board has stepped up its campaign to inform the public, especially victims, about the parole process and about ways in which individuals can express their concerns and views to the board and provide input to the decision-making process. In fact, a recently implemented policy directive and public information pamphlet address the participation of victims in parole decisions, and the board is currently waiting to see the degree to which individuals will take advantage of this new initiative.

A quick review of our statistics will be able to tell you a great deal about what the board does in terms of our day-to-day business but will tell you very little about our goals and our objectives. I have just given you a snapshot of some of our recent initiatives, but the board is striving for improvement on many fronts.

The board is very sensitive to external forces and in response has shaped a plan for the next five years. Over the next short while, the board will be examining, with the ministry, the areas of parolee case management and supervision, access to the parole system by short-sentence offenders, new approaches and technology to improve and expedite operations, the adequacy of the board's enabling legislation, and AIDS and parolees. We will also be seeking to improve the board's access to young offender records, especially criminal histories, focus our public

information program for target multicultural groups and systematize our internal research and evaluation function.

Admittedly, the board has set a challenging pace for itself but I am personally committed to strengthening Ontario's parole service. Based on the determination and enthusiasm I have seen in my staff and members during my few years on the board, I am confident that these issues will be resolved as targeted within our five-year plan.

1130

As mentioned in the board's mission statement, Values and Principles, we believe in the worth of the individual as a contributing member of society. The board has tried to promote this belief, not just in its dealings with offenders in the parole consideration process but also in its dealings with staff and members. Late in 1987 the board established a recognition program to publicly honour staff and members for their commitment, contribution and excellence in service to the board.

Belief in the value of our human resources is also reflected in the board's staff training and development initiatives. About two years ago, the board embarked on a course designed to afford members and staff greater opportunity to enhance their skills. Aside from a comprehensive basic orientation program for new members, the board also offers requisite courses on interviewing, chairing hearings, case preparation, writing and making decisions and human rights awareness. The board also encourages participation in personal and professional development programs, conferences and regional meetings.

Before I close, I would like to mention that I have a video here entitled *Preparing Yourself for Parole*. It is only eight minutes long and you may view it if you wish. Some pamphlets on the same topic are also available here. I would also like to extend an invitation to you to visit any of our offices, either my office here in Toronto or a regional office nearest you, to meet the staff and members. I would be happy to arrange for you to observe a parole hearing in one of our institutions.

I close with a special invitation to all of you to attend an international conference being hosted this year by this board. The Association of Paroling Authorities International is an organization dedicated to excellence in the performance of the parole function and it is comprised of parole boards in Canada and the United States. This year the Ontario Board of Parole will be hosting this conference, which will be held for the first time outside of the United States. It is

scheduled for 7 to 11 May at the Royal York Hotel. I hope that, if you are interested, you will be able to attend what is expected to be, in my opinion, a quality event in the field of parole decision-making.

Thank you again for this opportunity to speak with you today. My colleagues and I will be very pleased to respond to any questions that you might have.

The Vice-Chair: Thank you, Mrs Henriksen. That was an excellent presentation and you certainly brought out a lot of points in your brief. Those pamphlets *Preparing Yourself for Parole*—they are the same as what is on the video, I would presume?

Mrs Henriksen: They are the written version of what is on the video.

The Vice-Chair: Fine. If any member would like to see the video, we could perhaps look at it after lunch or maybe we will have someone who wants questions right now.

Mr Fulton: I wonder if we could see the video.

The Vice-Chair: If that is the wish of the committee. Okay. Could we pass those around? [Audio-visual presentation]

1143

The Vice-Chair: Thank you. We have Mr Owen, Mr Fulton, Mr Farnan and Mr Lupusella on the list.

Mr Owen: I would like to thank you also, Mrs Henriksen. Your statement was clear, concise and in language which I think most people would be able to understand and follow.

I was going to ask you to provide one thing and then go on to another, if you could give it to us today or get it for us. As you are aware, the whole concept of parole is under severe criticism at times and particularly every time somebody who is on parole is involved in a serious crime while he is out on parole. I appreciate that almost always that is a person who is there because he is out of a federal institution and there was a dangerous crime involved in the first place, but it puts the whole concept of parole up for criticism again every time it happens.

To me it is logical that parole is worth while because it is certainly better to have a person who is under supervision trying to adjust back into the community than to let a person complete his time and then go back, and then he can tell anyone who wants to help him that he can disappear. So the whole concept of parole is correct. But what I am asking you to see if you can give us is, do you have figures to show that the rate of recidivism is

lower if the person has had parole under the provincial system, as opposed to the rate of recidivism if he has not had parole?

I am fairly sure that it must be, but I think that if you could provide that information, it would be a weapon to help people defend the parole system itself.

Mrs Henriksen: We have the figures for the rate of return for parole because we use the warrants of suspension. If they were not paroled, I do not know. Ken, have you got this?

Mr Owen: Can you get the other as well to show the difference?

Mrs Henriksen: We will try to get them, but I do not think we have those at the moment, because they would come out of the ministry's statistics.

Mr Owen: Every time we as the MPPs get criticism of the parole system—I think that if it is available, that information would arm us with saying—and it has to be, I am sure, because I think somebody under supervision of parole is going to be doing a better job of adjusting than somebody who is flung out into the street on his own—

Mrs Henriksen: Quite true.

Mr Owen: —and he is amenable to being in a risk-taking situation, as opposed to the ones you do not think should get parole. So I am sure your statistics will help your cause. But I just wanted to ask whether you could find out whether it is available, and if it is, whether we could have it.

Mrs Henriksen: We will attempt to obtain those for you.

Mr Owen: To go on to the thing that I really wanted to discuss with you, I understand you are thinking of having your hearings recorded.

Mrs Henriksen: That is right.

Mr Owen: I would like to know whether you have started that on an experimental basis and whether you have any idea of the costs that are going to be involved if you go that route. There are pros and cons to having them recorded, and I would like you to sort of share that with these people. I think after you look at the pros and cons, you probably must be thinking that it is worth while or you would not be wanting to do it. My perception is that it is a wrong direction to take, but I would like to see where we go on this.

Mrs Henriksen: We have done some testing on this, Mr Owen. We have run two pilot projects in two regions, testing not only the equipment but some of the difficulties that would surround the entire taping of process. When we decided that

that was the direction in which we wanted to go, we really gave a tremendous amount of thought to it and a tremendous amount of consultation within the board itself.

We feel, first of all, that the taping of this—bear in mind that this will be audio taping, not video taping—will provide a full and accurate record of a hearing. There are upsides and downsides to taping, as you so adequately noted. The upside is that it will provide a very accurate record of the conduct of the hearing. It can also be used for training purposes and for review of cases, in the event that we need to review specific cases. So those were persuasive enough for us to feel that we can deal with the downsides, which would be the concern that some members might have that the hearings will be taped. The discussions we have had with the members does not seem to give us that indication of fear of taping the hearings, to move from nontaped hearings to taped hearings.

With respect to the cost, I will ask Mr Sandhu to give you an indication of that.

Mr Owen: Before we go on to the cost, can I just question one of the downsides which I do not think you have addressed? The hearing is not to figure out what brought the person there in terms of the offence only. The hearing is to find out what kinds of problems that particular prisoner has had that got him into trouble in the first place. Often it could be alcoholism, it could be sexual abuse as a child, it could be umpteen things.

If you decide to tape it, you are creating a permanent record of the very things that should be held in confidence to that person. I know you might take very good control of these records, but are you not making it more difficult for the person to address some of these problems, knowing that he is being taped? And are you not putting on a permanent record something which maybe society itself should not be knowing or having access to?

1150

Mrs Henriksen: That may be so. That is a good observation, except that the hearing is done to determine suitability for parole and readiness to get back out into the community. In that process, you are right, some of these very personal things might come out. What we have in our policy at the moment is—

Mr Owen: Do not misunderstand. I think it is important that those things come out at a hearing. I just do not think it is the right of the public to have it made permanent—

Mrs Henriksen: What I was about to say is that if the inmate does not wish to have the

hearing taped, it will not be taped. In the tests we have run so far in the two regions that I mentioned earlier there was one inmate who objected to the taping. But there may be, and we recognize this, people who do not wish to have the hearing taped. It will not be taped if that is the case.

I do not know whether I have addressed the concern you are talking about of having, in the public domain, this record. I think that it would be treated in the same way as we treat records at the moment, with certain restrictions, certain limits on what can be disclosed and what cannot be disclosed within the Freedom of Information and Protection of Privacy Act.

Mr Owen: Will your practice then be to wipe out the record after the parole has been completed and the person is free again?

Mrs Henriksen: Yes, it is another form of a file, it is another document.

Mr Owen: But it will be wiped out or eliminated.

Mrs Henriksen: Yes.

Mr Owen: At what point in time?

Mrs Henriksen: Yes, at the moment we keep it—is it five years? It is two years of retention.

Mr Owen: And what is the cost?

Mr Sandhu: The cost is \$25,000 to \$30,000 for the initial equipment and between \$8,000 to \$10,000 for ongoing replacement of tapes.

Mr Owen: For the whole of Ontario?

Mr Sandhu: For the whole of Ontario.

Mr Owen: For all of your hearings?

Mr Sandhu: Yes.

Mr Owen: Do you have to have anyone specially there to run the equipment or can it be done just by setting it up ahead and one of you will know how and push the button?

Mr Sandhu: That is right, one of our members will be responsible for setting it up and operating it.

Mr Owen: I still have some misgivings about it.

The Acting Chair (Mr Fulton): Members of the committee, it is nearly 12 o'clock. There are several members who have indicated they wish to question the delegation, including yourself, Mr Farnan. I am wondering whether we should not take a recess now, because we are not going to conclude by 12:30 as the chair had indicated earlier.

Mr Farnan: I have to visit a friend in the hospital this afternoon so I would appreciate if I

could—I have a few questions; I do not think there would be very many.

The Acting Chair: I was down for the next question, but I will grant you the—

Mr Farnan: Thank you very much.

Mr Haggerty: The chair can ask the question.

The Acting Chair: My notes are all over there. I will wait until this afternoon.

Mr Farnan: I just have a couple of questions. First of all, I want to thank you, Mrs Henriksen, for a splendid presentation on behalf of your board. I first met you, I think, up in Halifax, where it became obvious to me at the criminal justice conference that you were viewed as the guru of parole systems in the country.

Mrs Henriksen: I do not know how to take that.

Mr Farnan: You have certainly reaffirmed that here today. I am very supportive, our party is very supportive, and indeed see it as a key piece of the criminal justice system and not something in isolation. I think parole is something that makes the system work. Having worked within the system myself, I know the greatest motivator for the client population of the institution is freedom and getting back out and starting to get its life together.

Therefore parole is certainly something that is probably the ultimate in behavioural objectives in terms of getting the inmate to co-operate with a program within the institution. Some of it is role-playing, as you know, because inmates know the system, they know what they have to do in order to get that parole and so they perform. But in the process I think they may pick up insights that are very useful and valuable and may indeed change lives around.

The statistics are very interesting. I want to go back—82 per cent to 85 per cent complete terms without violations. That speaks very highly of the kind of work that your staff is doing here and, in addition to that, of the 18 per cent who do not complete the term of parole, 16 break the conditions and two per cent only with further violations.

Would the violations be similar to the violations that got them there in the first place, so that they would be going back to the provincial level of corrections as opposed to the federal? Of that two per cent, are we looking at two per cent coming back for two years less a day? Or how many of that two per cent are we looking at who are going beyond the two-year term?

Mr Chitra: Perhaps I can respond to that in a general way. When inmates have their parole

suspended and revoked, they are returned to custody to serve the balance or the unexpired portion of the provincial sentence that they received initially.

Mr Farnan: I am not talking about that 16 per cent. I am talking about the two per cent.

Mr Chitra: They presumably would get an additional term of incarceration, which would normally be consecutive to the remnant or balance of the existing provincial incarceration, and some of them would go to penitentiary and some of them would remain in the provincial system depending upon the length of the additional term.

Mr Farnan: That is my question, what percentage?

Mr Chitra: I am not sure we have—

Mrs Henriksen: We do not have those statistics, what percentage goes to the federal service and what remains in the provincial—

Mr Farnan: I would be interested in knowing, if it is possible—I do not know whether these figures are available—but I think your success rate is phenomenal, and if indeed someone is doing a breaking-and-entering act, is put on parole and picked up again for a relatively minor crime against society, that is pretty comforting, I would suggest.

Looking at that target group, that 18 per cent, those who break conditions and those who have further convictions, what is the case load of parole officers with regard to working with these people after they are released?

Mrs Henriksen: As you know, the ministry is responsible for the supervision of parolees.

Mr Farnan: But I know they are your babies, and you are going to watch them and you want to make sure they do well.

Mrs Henriksen: Yes, but the board is not responsible for the supervision of parolees—the monitoring of that supervision. I am not trying to duck out of it. I just want to make it quite clear.

Mr Farnan: I know. This is meant to be exploratory and helpful for the committee.

Mrs Henriksen: You asked me what percentage of parole officers there are to parolees. Was that the question?

Mr Farnan: The case load. Does it concern you? Obviously you invest a great amount of time, your success rate is fantastic and you have got this 18 per cent out there. You want the maximum return in terms of the least number of people breaking the conditions of parole and the least number of people coming back. So you

have a vested interest that the parolees are well serviced when they are out in the field.

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Mrs Henriksen: That is correct.

Mr Farnan: Have you got concerns with the number of parole officers who are available for those people who are released? You have a very good working relationship with the ministry; that is excellent. But I know you still have some views, and I hope that maybe you might be able to shed some light on this.

Mrs Henriksen: The Provincial Auditor's report provides those figures, and that is what I am looking at at the moment.

Mr Farnan: Thank you.

Mrs Henriksen: It says that in December of 1988 the province-wide average case load was 93 adults, 77 active or 49 young offenders. So that sounds as though it was a case load of 93 adults per parole supervisor. Those are the 1988 figures. There may be some more recent ones, and I think that it would vary depending on whether it is in the north or in the urban centres. This report also indicates that in spite of the high case load, when there are violations of parole the violations are reported immediately to the parole board. These are reported to the parole board; because of the expeditious way in which it could be handled, we have that mechanism in to issue a warrant very quickly. I am concerned that the numbers, I know, are high, but it seems to me that the parole service is still well served from what I gather from this Auditor General's report of last year.

Mr Farnan: There is a distinction between what the two of us are saying. You are saying that if there is a breakdown, immediately the bell goes off or there is a red light, and the system knows somebody has broken parole. My concern is that we put the effort into the system so that we get less often that bell going off and the red light going on. I would suggest and I would think that with your experience, 97 cases per parole officer is not helping you to reduce that 18 per cent figure in your success rate.

Mr Chitra: Can I answer to—

Mrs Henriksen: Sure. Would you like to say something?

Mr Chitra: Yes. Mr Farnan, we have, on any given day, as you may know, about 1,500 parolees in the community, and we have 600, or 612 to be exact, probation parole officers supervising these parolees. That works out to the average of about two to three per parole officer.

As you know, that is not the way the case load is distributed. Often, in the metropolitan centres, the probation parole officers are carrying a larger case load, and often what happens is that we also have specialists who will handle larger numbers of parolees and lesser of probationers. But, by and large across the province, probation parole officers have a mixed case load. Our view is that the service we are getting from the probation parole officers is adequate.

Mr Farnan: Okay, thank you. I would question that because, first of all, there is a tremendous turnover in parole staff. The number of people who leave that particular position is very, very high. The remuneration, in some cases, could be looked at in terms of making the job somewhat more attractive and in terms of the case load. I think it is within your mandate as a board to look at the 18 per cent. You can say, "Hey, 82 per cent, 85 per cent complete terms without violation." I think we all come to you and say, "Hey, guys"—and women, of course; nearly missed out there—"you're doing a terrific job. Here is the 18 per cent. Some just break conditions. Two per cent have further convictions."

Now, what can we do as a system? I think you can look at that and say, "One of the things we can do to improve our success rate is to look at the follow-up service." Now, I put it to you this way: It is being expressed to me that if we were to do away with the correctional system as it presently stands and have one parole officer per inmate we could have a parole officer on a one-on-one basis, eight hours a day, with every inmate who is within the system at the moment. That is extraordinary. So I think this whole area should be looked at.

The next point I would make is in terms of storage of the tapes. Where are the tapes stored?

Mrs Henriksen: As I mentioned we have not started the implementation in full form as yet, but since there are none that are stored at the moment—the test ones have all been erased—the best that I can tell you, at the moment, is that we are looking at various options. It will be stored a secure place. We have to look at things like temperature of the room and that sort of stuff. In a secure place it will be stored.

Mr Farnan: Why would you want to store the tapes any longer than you would need a review of that particular case? You said you either give a "parole granted" or "parole denied" for the review. Why would you want to store a tape of that hearing, with that record, on that individual? I think there is enough information on individuals

within our society, personally, than to be building up this file, especially if the file is negative on the individual. We are saying to the guy on the tape, "Here is the door open, the sunlight is shining, you are going out into the new world, you are going to put your act together, and we have got a tape on you back here that we are going to hold for two years." Why do you not just hold the tape until your review and then if the review is fine and you have made your final decision, destroy it?

Mrs Henriksen: I can think of, perhaps, one reason. The review is done, the decision is made, the inmate goes out and we may have to revoke that parole or we may have to suspend. In other words, we may have to have some further action take place after that initial decision to grant or deny parole is made. In the same way we retain today a hard copy of a file; we do not chuck that out shortly after we take the parole decision. We retain that in the event that we need to refer to it if there is a revocation or if there is an appeal in some circumstances. All records that we have at the moment, it is sort of like a two-year limit that is then imposed on retention. The tape is another form of a record that we would have on this particular case or in these cases.

The Vice-Chair: Mr Farnan, do you have more questions?

Mr Farnan: I have one last question.

The Vice-Chair: We can adjourn and come back after.

Mr Farnan: Okay, the last question is this. I am certainly concerned about the direction that the criminal system is going and that there is a need for some integration and some co-ordination between the sentencing arm and the policing arm and the corrections arm. We have statistics here in your report of 75 average days for male, 45 for female. I am not convinced that an extra seven days in jail is going to make or break an individual. I am more convinced that the type of work you are doing, sitting down with them, getting them to review their values and their goals, giving them some support system when they get out, is the kind of thing that real rehabilitation is about. That is the kind of thing that builds new lives. The extra seven days in jail, I do not think, will make the difference.

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My concern is when I find the Ministry of Correctional Services building new jails at enormous expense when there are alternatives. I am not going to get into all the other alternatives, but I see you as part of the alternatives. I think

you could still have your 80 to 85 per cent. I think you could probably release more people into the community and retain these statistics if, as a system, we were to put more parole officers into the field to make sure they were working very, very closely.

I was wondering if this is something that you share in your dialogue with the minister. Is it your belief that if there were twice the number of parole officers in the field for follow-up, we could be releasing more individuals? When you release an individual in Metropolitan Toronto, you know he is only going to see his parole officer once every X amount of time and very often in a very rushed and crowded situation. If you had the understanding that you were going to get the real follow-up, I think you could make judgement calls on some individuals more easily.

Do you share that viewpoint? Is it something you would discuss with the minister as something to think about, to review, to examine, maybe to experiment with?

Mrs Henriksen: There are discussions that go on with the minister and ministry officials concerning the whole question of supervision, and that is perhaps one of many, many areas. I think that we are always open to consideration. We are very concerned, too, about ensuring public safety. I do not know what the right answer is yet to all these very complex social problems, but I do feel that whatever we end up doing, we will not do it to the detriment of public safety.

We will be able to consider perhaps more cases, but we have to ensure that we have the proper documentation in a timely fashion and that we continue to maintain our procedural safeguards and our standards. We do not intend to jeopardize public safety whatever we do.

Mr Farnan: No one questions that, but—and I suppose this is the critical question—when you put an individual on parole, if you knew he was meeting a parole officer four times a week as opposed to twice a week and, in many cases, often a lot less, is that a factor that would impact on your decision?

Mrs Henriksen: If I think supervision were going to be a problem, yes, it would.

Mr Farnan: That is right. That is exactly what I wanted to know. You are terrific; thank you very much.

Mrs Henriksen: It took a long time. Sorry about that.

Mr Owen: Just as a supplement to—I am a little confused. Mr Farnan asked what the case load was of a parole officer and I think I got a little conflicting information. What is the average?

Mrs Henriksen: Yes, I read a line from the auditor's report. I am sorry, I did not read the right line.

Mr Owen: I cannot believe that that is it.

Mr Farnan: That is the average, eh? There are individuals who are bogged down with many more and who just do not have an opportunity to see their cases, and if they see their cases—

Mr Owen: What is the number?

Mr Sandhu: Ninety-three.

Mr Owen: Ninety-three is the average case load of a parole officer in this province.

Mr Sandhu: Probation and parole.

Mr Owen: Yes, but still it works out, it still a caseload, 93.

Mr Sandhu: But that is both probation and parole.

Mr Owen: It is still—

The Vice-Chair: I want to get the feeling of the committee on what we are going to do here. I understand there are a few members who are leaving and who are not going to be here this afternoon. It looks to me as if two or three are going to be here. How many more do we have to ask questions? Mr Fulton?

Mr Fulton: There are at least two on the list.

The Vice-Chair: That is right, but he is gone, the one is gone. He took all his books with him.

Mr Fulton: No, there is stuff here.

The Vice-Chair: Is there still stuff there?

Mr Fulton: Yes.

The Vice-Chair: Could we adjourn until 1:30 and come back at 1:30? I think you will have to phone his office and tell him. I want the consent of the committee to start at 1:30 whether there is a quorum here or not, so that the ones who are here who want to ask questions will have that opportunity. The committee agrees to that. Fine, we will adjourn until 1:30.

The committee recessed at 1216.

AFTERNOON SITTING

The committee resumed at 1327 in room 228.

The Vice-Chair: We can go ahead. Mr Lupusella had a couple of questions, I believe.

Mr Lupusella: If I may, I would like to go on with a question related to a problem which I think is affecting society as a whole. It has to do with drug-related offences. Do you have any statistics you can provide to this committee in relation to the number of people who committed drug offences applying for parole and what kind of assistance is given to these people in relation to rehabilitation? Can you talk to us in relation to centres where they are referred for rehabilitation, detoxification, whatever the problem is, and how a probation officer, when an inmate with a drug problem is receiving parole, can follow the individual in order that he will not get into the same problem again until the whole sentence is terminated?

Maybe you can give us some background information, especially about where the centres are and if the jails have rehabilitation programs built within the system and outside of the system. I think the problem is so severe. I heard the criticism that the parole board is lenient on granting parole to these kinds of people when we know for a fact they are going to get into the same problem which they had before being sentenced.

Mrs Henriksen: I think Mr Sandhu has some numbers here that relate to the problem you have raised. That would help us to put that into context.

Mr Sandhu: The Ministry of Correctional Services, during 1987-88, had 3,771 drug-related offenders in institutions, who were sentenced. That constituted about 8.4 per cent of the total offender population for that year.

Mr Lupusella: Sorry. If I can interrupt you, are we talking about users or suppliers of drugs committing the offence? Do you have a breakdown of information?

Mr Sandhu: The category I am reading from says "drug-related." That would include both. Normally one would assume that it is relating to trafficking or possession. We do not have figures on how many of those we did see, but if we were to assume that we saw the same percentage as there were in the general population of the offenders, then about eight per cent of the people we saw had drug-related problems.

Your other question related to what sort of treatment programs are available. The Ministry

of Correctional Services has a number of facilities where treatment is available for drug-related problems. In almost all of its institutions, the ministry certainly has a counselling program, such as Alcoholic Anonymous, that comes in and talks to the people.

Other than that, I am not sure if your concern is that the parole board lets them out too early or too late. In answer to that question, what I can say is that we work closely with the ministry. If an inmate is on a certain treatment program within the institution, there is a good chance we will not let him out. If he is receiving treatment, if he is in need of treatment, then we would consider his parole only at the completion of that treatment. If, on the other hand, it is felt that a particular inmate could benefit from a treatment on the outside—as you know, there are some good, effective treatments in the community—then we would consider the application for that during our parole hearing.

Mr Lupusella: If I may intervene, you said that people can apply for parole when they serve one third of their sentence. From the total population of drug-related offenders, how many people are applying for parole and how many get parole? Do you have these statistics?

Mr Sandhu: No, sir, we do not have a breakdown that focuses simply on the drug-related. What we are saying is that our assumption is that we see a cross-section of all of them, so our assumption is that we see eight per cent who apply and come before us for parole hearings.

Mr Lupusella: Eight per cent of the total population?

Mr Sandhu: Yes.

Mr Lupusella: The reason I am raising this issue—I think I raised my concern in my preamble—is that people are jailed for drug-related offences. They are users or suppliers or whatever they are, I do not know. I am concerned, in particular, about the users. They are sick. They become psychologically sick. They need rehabilitation within the institution. Do we have programs to rehabilitate these people, especially in view of the fact that they have to serve one third of the sentence? What kind of device do we have within the institution in relation to these kinds of people? Then I am going to raise the other concern, when they get parole.

Mr Chitra: Perhaps I can respond to that issue. The Ministry of Correctional Services operates 48 adult custodial facilities in the province of Ontario. The majority of those institutions have basic programs. Mr Sandhu has mentioned one, Alcoholics Anonymous, and there are also other programs and a number of institutions which are specially designated as treatment centres. A good example of a treatment centre is the Ontario Correctional Institute in Brampton.

Mr Lupusella: For what? For alcohol or drugs?

Mr Chitra: It deals with people with a wide range or variety of problems and there are specific programs directed to inmates with addiction problems.

There are also specialized programs at the Guelph assessment and treatment unit, which is a part of the larger Guelph Correctional Centre complex. My understanding as well is that there are programs at the Rideau Correctional and Treatment Centre, which is outside of Ottawa, at Burritt's Rapids. Individuals who are identified as having specific treatment needs can be, and are, referred to those facilities. If they express an interest and willingness in participating in the treatment programs, the programs are made available.

Obviously, if an individual comes in front of the parole board and he has an identified substance abuse problem, one of the primary considerations that the board is going to want to take into account is what he has done to address that problem or what steps he has taken in custody to deal with that.

The second question that the board deals with as well is, do they have specialized needs which perhaps cannot be met within the correctional facility but may be met by a grant of parole directed to a specialized treatment program outside? There are a number of places where individuals are sent outside of the correctional institutions. I was thinking particularly of the Stonehenge Therapeutic Community. It is a specialized community residential program for individuals with heroin and cocaine addiction.

Mr Lupusella: What is the location of that?

Mr Chitra: It is near Guelph. Many individuals, as part of their parole plan, in order to deal with the concern that the board has about a substance or alcohol abuse problem, will submit a plan to the board which will include either placement or involvement in one of the identified community programs.

Mr Lupusella: Are they detained in the centre when they apply for parole?

Mr Chitra: Stonehenge is actually, for lack of a better way of describing it, a halfway house. There are no fences. However, people are obliged to go there and there are very strict rules about their leaving or not leaving the premises. There are no people wearing uniforms and there are certainly no weapons or towers, but there are very strict rules about their leaving the premises. My understanding is that through the initial period of their program they are not allowed to leave at all.

Mr Lupusella: Who makes the decision for them to go to these centres?

Mrs Wilkinson: They can request it themselves.

Mr Sandhu: If the inmate identifies a problem and wants to go there, he can request to go there; or the Ministry of Correctional Services, if it deems it necessary, if the person could benefit from that program, could make a referral to that program. On occasion, a parolee could be paroled for the purpose of attending that treatment program.

The Vice-Chair: Could I have a supplementary? Does the Mimico Correctional Centre have a program within it, do you know?

Mr Chitra: I am fairly certain it does. I know that a lot of the institutions have a basic addiction and substance abuse program. It is not an in-depth type of treatment program of the sort you would get at a place like Stonehenge. My understanding is that usually it is composed of eight to 12 units. In the first unit, they will bring in somebody who is a former addict who can talk about his experiences with either alcoholism or addiction. The second one is usually someone who has been a victim of a person who has a substance abuse problem.

In terms of the actual specifics of the programs at Mimico, I cannot tell you, but we could certainly—

The Vice-Chair: Who is responsible for the program? Is it the Ministry of Correctional Services.

Mrs Henriksen: Yes, that is correct. The ministry is responsible for all the treatment.

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The Vice-Chair: Who monitors that program to find out whether it is successful or not? Who would monitor that?

Mrs Henriksen: It would be the ministry. The ministry will do the monitoring of that program.

The ministry is responsible for the treatment programs, be they substance abuse, sexual abuse or otherwise.

The Vice-Chair: It has been brought to my attention that it is not very successful in that institution. I have known somebody who has been there. They went there for treatment and it did not do them a bit of good and they said, "The program there is not working and it did not help me a bit."

Mr Owen: Are you referring to Mimico?

The Vice-Chair: Yes. So I was curious about who monitors it to find out—if it is the ministry monitoring its own program, there should really be somebody else who is looking at it. I was wondering if the parole board looks at the system in place there, if it is really part of your decision when you let somebody out on parole to see if that system is working to the betterment of that resident.

Mrs Henriksen: It is an interesting thought, except it is so far outside of our mandate, sir. That would require tremendous changes, I think, within the total system, because the board itself does not and certainly cannot, with the lean resources we have at the moment, assume that kind of responsibility.

The Vice-Chair: Thank you. Tony, I am sorry.

Mr Lupusella: No problem; I think that was an interesting supplementary.

Generally speaking, the concern that I have is that the board might make an error in judgement by releasing these kinds of people in advance, by granting parole when in fact they are not only affected by the effects of drugs, if they used to be users, but are also psychologically sick for abusing the drug. They are on the street without any way to determine whether or not the individual is going to rehabilitate or is going to a centre or a doctor, whatever. You rely on the commitment from a probation officer that the individual has to get in touch with him maybe once or twice a day, whatever, but there is no way for you to monitor the situation as to whether or not this individual is getting better. I mean, you are not helping the individual; you are increasing the problem of the individual.

Mrs Henriksen: If I can take your first question, about the monitoring aspect, we do have some responsibility for monitoring. We do that through monthly reports that parolees have to submit to their supervisors, which will include the treatment, that they are attending or not attending. In that monthly report, the supervisors

would also make comments to the board. So we do this monitoring of the supervision religiously. We have some very good liaison with the parole supervisors with respect to all parolees, including the kind you are talking about.

Whether or not the individual gets better on the treatment program is obviously a very difficult question. As you know, drug or substance abuse does not refer to parolees only. It is an extremely wide and complex social issue. Many sophisticated programs that have been tried still fail to help individuals to get better. So while the parole board will have some interest, obviously, in the parolee's or the substance abuser's recovery from the substance abuse, I would think that medical people will also have an equal amount of interest. Psychologists, psychiatrists and all the mental health people will have an interest in helping to get that person better.

So in some ways, to put the fact that the person is better or worse off as a result of the board's paroling him would be a difficult think to do, I think, because I think this social problem becomes very much of a shared public responsibility and—

Mr Lupusella: But nobody is tackling the problem—nobody. We do not have good programs to rehabilitate these individuals. I have more faith in the institution to provide rehabilitation for this kind of people, rather than sending them out on the street where they can become users of drugs again.

The other reality of life is that we have centres in our society, and the waiting list is so long that to get into centres it takes six, seven months. What kind of success do you have for these people being referred to rehabilitation centres to get on to the list? Just a word from a probation officer saying he is going to a doctor, he is going to a psychiatrist, and nothing else, and you are pleased.

Mrs Henriksen: I was trying to say that it would be very difficult to extend the parole mandate to the point where we are curing all the drug addicts in the country or in the province.

Mr Lupusella: We should.

Ms Henriksen: It would be very difficult for us to extend that mandate to that point. We do have a concern, we do care about what happens when people are paroled, and we can monitor to the best of our ability. That is what we try to do.

Mr Lupusella: Do you make any recommendation as a board that any institution is going to have problems built in within the system, so you do not have to grant parole to this kind of people,

but they can get help? As a board, did you ever make this recommendation to the government?

The Vice-Chair: I am not so sure it is their place to do that.

Mr Lupusella: It is not in your mandate.

Mrs Henriksen: No.

Mr Chitra: Just perhaps to maybe put this issue in a little bit of perspective, as Mrs Henriksen noted in her introductory remarks, the average length of sentence for a male offender in the province is 74 days; the average length of sentence for a female offender is 47. Taking into account factors like remission, it is not easy for a system to solve or to cure or sometimes to make a meaningful difference in terms of an individual's addiction problem if it is something that has existed for many, many years. The programs that exist have to be specially designed to try to have a maximum impact in a short period of time, but there is no doubt that at some point in time, every person who is incarcerated in a provincial correctional facility in Ontario will get out and there is no doubt a need for resources to assist him to continue coping with his problems.

Mr Sandhu: If I may just also address the concern that you have put forward, as a parole board, if we know that a person before us has a drug or substance abuse problem, we will not release that person on parole without proper conditions in place, be those conditions that the probation and parole officer will monitor, be it that the conditions would be residential treatment, which has been considered as well. We will release somebody to reside at one of the residential program places where there is alcohol or drug treatment available. We would not let out—knowingly, that is—any drug addict who we think is still suffering from the effects of taking drugs, without proper conditions.

Mr Fulton: I wonder if you could first of all give me a profile of an inmate. You have made reference, I think, in your initial submission that most inmates were property-related offences, as I understood it. Having been a recent visitor—and I emphasize visitor—to a provincial institution, Mr Chairman, with respect to our earlier conversation privately—

Mr Lupusella: As an MPP.

Mr Fulton: I visited some of Tony's friends in the east Metro detention centre.

Just in relating to that, I would like to get your ideas of the profile as best you can describe it.

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Mrs Henriksen: There are some factors that we have that we could give you.

Mr Sandhu: Yes. The profile of an offender who is serving a sentence in a provincial facility, and this is an offender that we see, I have six broad categories, and this is by offence type.

The first category is the break and enter, theft, fraud and property-related offences. People serving these kinds of sentences numbered 9,743, which constituted about 21.8 per cent of the total population. That group is the largest group in the provincial facilities, your break and enter types.

The second group serving sentences in provincial institutions is the assault and related arson and weapons charges, and that constituted 11.7 per cent of the total. The third were those charged with drug-related offences. I mentioned earlier that those constituted 8.4 per cent of the total. The next broad category was violent offences, and that consisted of 3.4 per cent of the total. The next category was nonviolent sexual offences, and that was 0.4 per cent.

After breaking it down in that way, the last category which has a catch-all, breach of court order or escape or other breaches of provincial statutes, municipal bylaws, etc., amounted to 24,241, which is 54.2 per cent. If you wish to have a more detailed breakdown, that is available, but for the purposes of this meeting I brought this and we compressed it into those six broad categories.

Mr Fulton: Most of the people incarcerated are in that last group, invariably.

Mr Sandhu: Miscellaneous; a host of—

Mr Fulton: You mentioned municipal bylaw infractions?

Mrs Henriksen: Yes.

Mr Fulton: How would someone end up incarcerated, as a result of a fine default?

Mr Owen: Where there is a \$100 fine or two days.

Mr Fulton: So half of your charges—I mean people—are as a result of very minor infractions.

Mr Chitra: It is a little bit misleading. I think the ministry's annual book provides a bit more precise statistics. The provincial jail population is composed of those individuals who are on remand awaiting sentencing and those individuals who are serving periods of incarceration. In terms of actual numbers, maybe you can put it a little bit more in perspective.

Mr Sandhu: Okay. There were Liquor Control Act, Highway Traffic Act and something called miscellaneous against public order.

Mr Fulton: I did not mean to go off in this direction, but to get it clear, a Liquor Control Act

offence would be somewhat different from an alcohol-abuse-related offence. This could be more in terms of licensing, perhaps a licensee operating beyond one o'clock or two o'clock in the morning, that sort of thing.

Mr Sandhu: Yes.

Interjection: Intoxicated in a public place.

Mr Sandhu: Yes. That is the miscellaneous category that we had lumped all of these in.

Mr Fulton: But in the scheme of things, they are relatively minor. They are not offences against the person. They are not violence. They are not offences against somebody else's property necessarily, and you have not hurt anybody.

Mr Sandhu: Right.

Mr Chitra: There are different ways of counting it. Again, I do not have the precise figure, but I think on any given day about eight per cent of the population in custody—

Mr Fulton: The reason I am asking is that we continually hear about this overcrowding problem, and yet it seems to me that a lot of your responsibilities in fact are really not—they are antisocial behaviour, perhaps, or: "To hell with the law. I'm breaking the rules, but I haven't whacked somebody over the head; I haven't been violent with somebody. I haven't stolen your property," and this sort of thing. That is what I am getting at, because certainly the east Metro centre, in those areas I visited, appeared to be crowded.

I never asked you how many responsibilities you have, numerically. How many people are incarcerated?

Mrs Henriksen: Okay. Do I hear the question as, since we have such relatively minor offenders and it is overcrowded—how does that relate to parole, or was there—

Mr Fulton: You have got so many people in there, and we keep hearing, especially from the NDP, in the House about overcrowding and building more institutions. How many of the incarcerated people are in fact in there because they broke a municipal bylaw, a \$100 fine or two days, that kind of thing? Did I understand you to say 54,000?

Mr Sandhu: It is 24,000. Over the year.

Mrs Henriksen: I do not want to be rude. I would like to answer your question, but I am not in a position to do that. It is a question that probably should be directed to the ministry.

The Vice-Chair: It has nothing to do with the parole board.

Mr Fulton: It may be. I am here to learn. I have never done this before, okay? We are supposed to be attempting to get information.

Mr Haggerty: Could I follow up on that one?

The Vice-Chair: We are talking about parole here; we are not talking the police force.

Mr Haggerty: No, but we are talking about community work. Many times—

Mr Fulton: But you are also talking about parole—I mean, surely, because of the pressures of overcrowding, when you have got four people in the cell that was intended for one or two people, it has got to be part of the equation and the pressure is put on the parole process.

Mr Owen: But those people who are in for infractions of municipal bylaws are usually there for a very, very short time. They are never, ever there long enough to come into the orbit of the parole program.

Mr Fulton: I understand that. If I have stepped beyond the mandate of this committee, then I apologize, but I do not think I have, and I understand that two days or \$100 means two days—

Mr Owen: And sometimes not that.

Mr Fulton: Just to understand that, I am trying to figure out, in response to our friend from Cambridge, who frequently stands up and says, "Either you've got too few people managing the system, you've got too few beds—

Mr Haggerty: Not enough parole officers.

Mr Fulton: —not enough parole officers," and yet we have got a whole bunch of people in there, whether they are there for 12 hours, 48 hours, or some very short duration, who may not need to be there. That is what I am getting at.

The Vice-Chair: That is a good statement. It has nothing to do with parole, though.

Mrs Henriksen: I understand what you are saying, and I can only repeat that I cannot address that question. The time is short. Where the people are in for some of these offences—it takes an average of three weeks for us to collect materials to hear a simple case, let alone try to attempt parole for people who are doing seven days. We just do not hit them. We do not get to them.

The Vice-Chair: Ray has a supplementary here.

Mr Haggerty: I am just following Ed. We are not getting the information we are looking for.

The Vice-Chair: You are talking to the wrong people, that is why.

Mr Haggerty: No, we are not asking the wrong people. Many are put into, say, the Niagara Detention Centre, waiting for their court cases, and of course, when the judge makes the decision, he says: "You spent 10 days in jail. We're now going to move you to Guelph. Then you can apply for parole." It could be a six-month term.

The question is, if you have got overcrowding in the jails—and you may have somebody there, as Tony has mentioned, with a serious offence who should not be out on the streets by parole—you have got the pressure the other way from Correctional Services, saying, "Look, we've got to find more accommodation."

So what you are doing? You have got 24,000 there on a miscellaneous stay. It could be six days. They could be sent to jail and go in on Saturdays and Sundays, to pay tribute to their cause to society, in a sense, you know, the weekenders and that; you know, they are working and coming back. But it is taking space in these correctional institutions that puts pressure on to say, "Build more." And then you come along with a parole, or perhaps some of them are getting out a little bit too soon, because there is not enough space there to put the 24,000 in.

I do not know if the signal comes down to the parole board to say: "Look, we've got to get these people moving on. You're going to put them out on parole." You have apparently got a good turnover in this area. But you have got 15 per cent that goes back in.

1400

Mrs Henriksen: Again, I think you are well outside of my scheme, but I will address this business about pressure on the parole board to release as a result of overcrowding.

We will not release based on the fact that the place is overcrowded. We will release by virtue of assessing those three criteria, which we must do in every single case.

If we begin to consider releasing holus-bolus as a result of overcrowding, I think we are entering into very, very dangerous ground. So, while I sympathize profusely with the crowding situation within the ministry, I will not advise anyone to release inmates via parole simply as a result of overcrowding. Other ways of releasing the crowded population, the crowding problem, will have to be sought.

We will release more people if we are assured that we can get timely information at the front end and that we address those criteria for each and every case. But we cannot adopt a principle

of releasing just because there is a crowding problem.

The Vice-Chair: Explained very well. Mr Fulton, do have any further questions?

Mr Fulton: Yes, I have. Someone planned them here, I suppose. I would like to get a better idea of just what the whole system is about, and you are a part of it, but forgive me if I ask you a question that does not necessarily come in your clearly defined mandate.

What is the difference between the federal and the provincial responsibility? Now, I know that a deuce less two is where you get your clients from, but I had asked this question earlier and I want to have it on the public record: The difference between your clientele and the federal clientele, how is that decided upon? It is not necessarily under Criminal Code charges or Highway Traffic Act charges or anything else.

Mr Chitra: Length of sentence. Sentences of under two years are served in a provincial correctional facility; sentences of two years or more are served in a federal penitentiary.

Mr Fulton: So the determination on whom you receive is made by the judge, not by legislation that a certain crime within the Criminal Code would be a federal offence, certain other crimes or charges would be provincial.

Mr Chitra: No. The majority of people who are in provincial custody are there for violation of the federal law, but the determining factor is not the offence or the crime, it is the aggregate or length of sentence. It is a factor which is very hotly debated or contested in criminal proceedings, because the crown attorney, defence counsel and judge are acutely aware that, depending upon the length of sentence handed down, it will make a difference in terms of the individual's place in the overall criminal justice system.

Mr Fulton: Sure, and I guess a smart defence attorney is going to hope he can get the deuce less, from seven or eight years—I mean, it means an entirely different set of rules and location for his client. As opposed to being sent to New Brunswick or BC or something like that, he is going to be within the province. He is then eligible for parole at a much earlier date, right?

Mr Chitra: No. The parole eligibility rules, for full parole that is, are precisely the same for federal inmates as they are for provincial inmates, with the exception of individuals who have been convicted of certain offences of

violence. The basic rule is one third in the federal or provincial system.

Mr Fulton: Should there be a more clearly defined area of jurisdiction between the federal responsibilities and the provincial responsibilities in terms of who goes where?

Mr Chitra: The line is quite firmly drawn now. It is length of sentence, and that has been a feature of the criminal justice system in Canada for 120 years, basically.

Initially, in the colony of Upper Canada, it was the province that was responsible for incarcerating everybody, regardless of their length of sentence. But with Confederation in 1867, a decision was made to divide the custodial system, essentially between penitentiaries operated by the federal government and provincial correctional facilities operated by the province. At that time the dividing line of two years was selected, and it has become a well-known, well-entrenched feature of the system. The rationale for it, I guess, is probably lost in history, but my own sense of it is that the rationale was probably that those who are serving relatively shorter sentences should be permitted to do so closer to their homes.

Mr Fulton: So the system is working all right as far as you are concerned, in that respect.

Mr Chitra: It seems to have worked fairly well for 120 years, even though periodically there is talk about changing the two-year dividing line.

Mr Fulton: You indicated in your submission that the average stay of people in custody is something around 75 days for men and 47 days for females. Is that the average time in protective custody or is that the average time of a sentence?

Mrs Henriksen: That is the average time of staying in prison, average time of stay.

Interjection: Of sentence.

Mr Fulton: Which is it, the average time of a stay or the average time of a sentence?

Mrs Henriksen: The stay is sentence. The average time of the sentence—

Mr Fulton: The average sentence is less than 90 days then?

Mrs Henriksen: Yes, this is the sentence.

Mr Fulton: At what point then is someone eligible for parole?

Mrs Henriksen: At one third of 90 days, if that is what they are serving. That is why I was saying there are so many inmates who are not—

Mr Fulton: An inmate could be a client of yours for 30 days and apply on the 30th day.

Mrs Henriksen: Yes, if he has been sentenced to 90 days.

Mr Fulton: How long is the parole process? From the video we saw and everything, how long does that take?

Interjection: It wouldn't be long.

Mr Fulton: It is a tremendous demand not only on you folks, but as well on the people who are there 24 hours a day in the custodial role of taking an inmate from the cell to a holding area, to the elevators, to the parole meeting room, certainly if you are going out of the institution to a court and so on with vehicles, on the staff of the institution to move inmates around.

Mrs Henriksen: We should also bear in mind, though, what I said earlier. If the sentence is less than six months, then the inmate has to apply for parole. Most people serving 30 days probably will not apply, or even 60 days, will serve out that sentence and, with good behaviour, leave at the earliest possible date that they can leave the institution.

Mr Fulton: Okay, but the average sentence is 90 days. They all have the legal right to apply at 30. How long does normal parole procedure, based on your film—

Mrs Henriksen: On average, it takes us, as I said, three weeks to obtain the basic documentation. It takes, on average, about one hour to read that document and prepare the case. It takes 45 minutes to an hour to conduct a hearing.

Mr Fulton: But the whole process, though, takes about three or four weeks from the time that you apply as an inmate.

Mrs Henriksen: From the time of the receipt of the application, yes; from the time the application is received, if it is a short-sentence inmate. The majority of parole board work is done with the people serving six months or more, where there is more time. Seventy-five per cent of our work is done with inmates serving six months or more and 25 per cent with inmates serving less than six months.

Mr Fulton: At the hearing process itself, there are three people, you and two others, or somebody from your area and two others, and obviously the inmate. He or she can have his lawyer or somebody else. If they opt for that, there are now five people. Can the hearing proceed in the absence of any one of those persons? Do you have to have three people from your department, or can two hold a hearing?

Mrs Henriksen: No, we must have three.

Mr Fulton: If the inmate has requested a lawyer or some other party, does the hearing then get postponed, if the person does not show up or something?

Mrs Henriksen: If the inmate's assistant does not show up, it is up to the inmate to decide at that point if he would like to proceed with the hearing.

Mr Fulton: But it would be a basis for the inmate to say, "Forget it today because my lawyer or somebody could not show up"? You could not decide to proceed is what I am getting at.

Mrs Henriksen: Yes, the inmate can request to reschedule the hearing.

Mr Fulton: I am just trying to understand the cumbersomeness and costliness of the system for somebody who can maybe get out in 30 days anyway.

The Vice-Chair: Do you have another question?

Mr Fulton: I do. I hope you will bear with me. I set down my time earlier in the interest of Mr Farnan, because he could not be here this afternoon.

The Vice-Chair: There are some other members who want to ask questions.

Mr Fulton: Fine. We are here until six o'clock as far as I am concerned.

The Vice-Chair: No, we are not.

Mr Fulton: According to my schedule, we are.

Interjection: You do not know this chairman.

Mr Fulton: If we are not here for something meaningful, we might just as well adjourn now. As far as I am concerned, it is an education for me. I have taken an interest in this particular field and very recently visited the east Metro detention centre and only this week am arranging to go to one of the courthouses to listen in on some young offenders. It is an area of concern to me.

You referred to an inmate receiving "maximum benefit." Can you more clearly define what you mean by that? How does an inmate derive maximum benefit. They are kept warm and dry over the winter months; Mr Haggerty and I were talking about that earlier.

Mrs Henriksen: I know it may sound strange to someone's ears; believe me, it sounded strange to my ears too many years ago. How could one receive maximum benefit from incarceration? What it essentially means is that while you are in an institution you could receive maximum

benefit by availing yourself of whatever is available in the institution, or outside of it, via the people with whom you work in the institution.

If an inmate were in an institution where there was, for example, a fairly good substance abuse program and that inmate was a substance abuser and had absolutely no interest, in spite of counselling, in spite of advice, in spite of people coaching him or her to become involved in some sort of substance abuse program, and the attitude towards any kind of treatment or the attitude towards involvement in that particular program were quite negative, one could deduce that there was not much interest in becoming involved while in the institution so that there could be some sort of personal gain that the person might obtain from the program while he was in the institution.

The institution, when it provides a program or programs and inmates do not avail themselves of it in a way that would be of some benefit to them—I think that is what that statement means, to derive maximum benefit.

Mr Fulton: You further stated that few people realize that an inmate on parole serves the full sentence imposed by the court. How do you explain that when someone says:

"Well, I got two years less a day but I'm out in six months. I'm on parole. I'm at least outside. I have a couple of restrictions. I have to report to a parole officer once a week and I have to report to the local police department and a few other things, but otherwise I'm kind of free to do what I want to do."

How do you explain that to the public which perceives, rightly or wrongly—some of it is not within your jurisdiction, and I understand that, with young offenders and other federal people who have been out on restricted custody, what do they call it?

Mrs Henriksen: Mandatory supervision.

Mr Fulton: Mandatory supervision and that sort of thing. I understand that is not your responsibility. How do you suggest that somebody has paid his due to society when he in fact has not served in an institution the amount of time awarded by the judge?

Mrs Henriksen: To explain that to the public, I guess, you just have to keep repeating what the difference is.

Mr Fulton: That is what I want to know, because those of us here have to stand on a platform and explain that to the public. That is why I want the answer.

Mrs Henriksen: I am trying to put that idea across. If you were sentenced to 18 months in jail and if you were of very good behaviour while you were in the institution, you would have earned all your remission and you would be out of that institution with no conditions of parole, free and clear, at two thirds of your sentence, which is 12 months. Within 12 months, you have done your time, you have earned all your remission, you are gone. You have nobody to look over your shoulder, nobody to supervise you. If, on the other hand, you were granted parole, you would have been out on parole at one third of your sentence, which is at six months. However, you have the rest of your 12 months to do as a sentence out in the community, under supervision, with conditions.

Mr Fulton: That is what I am getting at. I do not see that other 12 months as being quite as restrictive to my person as the first six months spent behind bars.

Mr Chitra: Perhaps just to add, parole is a bargain in the sense that for an inmate to receive parole he or she has to surrender all of the remission that he or she has earned or may earn. If they are subsequently suspended and revoked, they do not get it back. The price that they pay, in the example that Sheila has given, is two extra months. It is the remission which they had to their credit at the time that they were granted parole in the first place. The parolee is under the system of supervision far longer than he or she would be if he or she just simply stayed in jail.

Mr Fulton: Yes, but it is a darned sight easier lifestyle than being behind bars. In terms of the public feeling it is being protected and justice is being served, we have not even talked about the victims of some of the crimes. Granted, going back, most of them are minor offences, but when you get into victims of violence—I also want to go back and ask about the sex crimes. I thought they were, by definition, determined to be crimes of violence, not simply sex offences, as you related. We have not talked about the victims of any of your people in custody, but that is another issue, I suppose.

Mr Chitra: I can appreciate the point of view that you are presenting, but parole has many faces and it is described by many people as many different things. The description I prefer best is from an article that was written a number of years ago. It was entitled Parole: Permission to be Slightly Free. It is not permission to be at large to do whatever you wish. In essence, the sentence continues. What the parole board does is it just simply directs that the sentence be served

someplace else, albeit in the community. If you break the contract that you made with the parole board, then you pay a price, and the price is the remission that you had earned. In many cases—not so much in the provincial system, because of the length of the sentences, but in the federal system—when you lose and your parole is suspended and revoked, it literally means years back in custody.

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Mr Fulton: But we have already established that you do not get too many who violate their parole. What was it, 14 per cent or something, who violate their terms of parole? The point I am trying to make is that the conditions of your existence in west Metro, east Metro, Guelph or wherever, confined to a cell with one or more people in there with you—and we all know what the facilities are like; I have seen some of the food and so on—the restrictions placed on you are a darned sight different from being on the outside, even with certain conditions of travel, mobility, association and having to visit your police station or parole officer. It is dramatically different.

In an institution you are told when to eat, where to eat, when to watch television if you want to watch it, what to watch and when to wash. You shower with 20 other guys. There is a pretty severe distinction. You have a limited exercise capacity. I do not know what some of the older institutions are like; I am talking about a couple of fairly new ones. There is no comparison in terms of the treatment. I think that is where there is a public concern, that parole is letting a person off pretty lightly by comparison to being incarcerated. I think that is a public issue out there that needs to be explored. I am just looking for answers.

I do not see how you can say, as I think you have said on page 12, that having served your term in jail and your parole, and you did not break it and did not violate it, you have done your bit for society. I may not agree with you. That is what I am getting at. I am looking for answers from you guys too.

The Vice-Chair: Okay—

Mr Fulton: I was not finished. I had another question. It has been a while since I marked this. It is over on page 13. You refer to “parolee case management and supervision, access to the parole system by short-sentence offenders, new approaches in technology.” What is that all about?

Mrs Henriksen: That aspect refers to our endeavours to come into the computer age and to

have a number of our activities computerized rather than work that is hand-done at the moment, or manual.

Mr Fulton: It is administrative workload? It is not new technology in dealing with the inmates?

Mrs Henriksen: No, it is not.

Mr Fulton: It is still a long, tedious process of bringing people into the institutions, and the same in reverse, getting them out. It takes four weeks to process a parole.

Mrs Henriksen: Our concern was to computerize our board operations.

Mr Fulton: I have some concern for the people whom we pay to manage the institutions and the workload we put on them.

One last question for now, Mr Chairman: Do you know the last time the parole board appeared before a committee of the Legislature?

Mrs Henriksen: In 1984.

Mr Fulton: I was not here then. Do you make recommendations to the committee, or have you in the past, in terms of the things you see in the legislation that may or should be changed? Do you do that?

Mrs Henriksen: I have not make any recommendations to this committee because I have not appeared before it before. But if you are asking whether or not we have any recommendations to make, I can think of perhaps one or two.

One of the concerns we have would be to try to improve on the information sharing that must occur within criminal justice agencies. A certain amount of that is done now. We get documents from various other criminal justice agencies, but I think there are some systemic barriers that make the information flow a little bit more difficult in getting documents from the courts, from the police and from other criminal justice agencies that would help us in doing our work. There is usually ongoing consultation with people within these agencies. That is one area where I would like to see an improvement as time goes by.

Mr Fulton: So your next annual report will contain recommendations to this committee for the Legislature to consider your amendments to the existing legislation or some recommendations for a new approach or action of some kind?

Mrs Henriksen: I am sorry, I did not tie that in to amendments to the legislation.

Mr Fulton: Well, whatever. A recommendation that this committee do more than sit here and ask questions back and forth, that we are going to do something in the institutions and the thousands of people who are contained therein.

Mrs Henriksen: I appreciate that, and anything that I can do to help facilitate that process, I will. What I am trying to do, Mr Fulton, is to give some of the feelings I have about where there could be improvements. We would be quite happy to make recommendations, either now or in the annual report.

Mr Fulton: I look forward to that.

The Vice-Chair: The normal process is, at the end of the meeting I usually ask, if you have any further input or any recommendations that you would like to make to the committee, we would appreciate your having it in writing to our research people so that when we deal with the report, that will be part of our report.

Mrs Henriksen: I see.

Mr Lupusella: If I may make a further observation just for the benefit of the chairperson, if you do not have the kind of recommendations that you would like to make to this committee, you can send us in writing your concerns and what should be changed.

Mr Owen: There are two other matters that have not been dealt with. One addresses the costs of your program. I know that there is a per diem for the part-time people. I think it is \$125 per day now. I know that you try to appoint people to look after the institutions in their area to reduce overnight hotel costs and what not, but I am wondering, how recently have you looked at that with regards to keeping the costs down with regard to hotels and restaurant meals and the like? Is it an ongoing thing? I know that when I looked at it a couple of years ago, I thought there was a bit of a problem there, but from what I could determine, I thought you have tried to plan a little more effectively to keep the costs in that direction down. Could you tell us where you are at the present time?

Mrs Henriksen: That is an ongoing thing, Mr Owen. As you probably know, these appointments are made, in the main, once a year, and whenever vacancies arise we try to fill those during the year. I have not really found that to be a problem. In fact, I think the salaries and wages in 1988-89 were something like \$738,000 or \$758,000, out of our total budget.

Mr Owen: I was not questioning the per diem. I was simply looking at—for example, if you had something in Barrie, how often are you sending somebody up from Toronto and he has to stay overnight, when you could have had the people in Barrie looking after the people in Barrie?

Mrs Henriksen: I can think of very few people, if any, who would stay overnight

anywhere. Maybe up in the north, when there has to be—

Mr Owen: Could I ask you to look at that and to let us know if there is very much of it? I have heard that from time to time it has gone on and it could have been avoided.

Mrs Henriksen: I will look into it, but, as I said, I am very doubtful.

Mr Owen: If that is incorrect, I would like the information, just so I can go back to the people who said it and say they are wrong.

My other question was one which I did not raise before because another member indicated that he might be wanting to raise it but he is not here now, and that is, do you have any figures to show the percentage—I know this relates mainly to northern Ontario—of the native people who are incarcerated, compared to the overall population in the north, and any figures as to whether those availing themselves of parole fit into the same percentage or whether there are more native people or fewer native people being considered for parole?

Mrs Henriksen: I think we have some figures on the native situation.

Mr Sandhu: Approximately nine per cent of the total prison population in Ontario is native people. We do not have a breakdown of what percentage we see before the parole board. That is one of the areas where we would like, once we have our technology in place, to monitor the areas.

Mr Owen: When do you think that might be? How soon?

Mr Sandhu: It is tied in with the ministry's technology, the new technology system that the ministry is putting in, and my guess is that within a year and a half or so, we will have that system in place. We can monitor those manually for you, if you are interested. We could give you an estimate of how many natives have been seen over a period of time and then project them back.

1430

Mr Owen: I know that you have been making a concerted effort to have native people serve on your committee. I know that you have been making a concerted effort to have parole officers who are native people so that they have better appreciation or fuller appreciation of what the native people are going through. I know that all of us want to do everything we can to assist the native people in coping with whatever difficulties they might be facing, but I would think that possibly, if we had some handle on some figures,

we would know whether we are serving them as well as we should be serving them, that is all.

Mr Chitra: This is something we have to do with a little bit of sensitivity. Everybody appreciates it is a very important issue, but the sensitivity or concern about a board or tribunal gathering ethnic and racial information on the applicants in front of it is something that—

Mr Owen: I am not looking for and I do not think anyone else would want that kind of information to try to point a finger at anyone, except at ourselves, if we are neglecting our responsibility to assist them in ways in which we have not been.

Mr Haggerty: I just want one question, and I want to thank the board for their comments today, but I have a problem. I notice in your opening comments in the documents before us that the Ombudsman may play an important role as an advocate for an inmate in the institution. Often members get calls about the parole system and just about what stage it is at. Somebody may consider it influence-peddling or something like that. Can we overstep our boundaries in this, when we are asked by constituents, "Would you check into the parole that is coming up and would you like to write a letter on our behalf," or something like that?

Mrs Henriksen: You can do that, at your own risk.

Mr Haggerty: But often this happens, and I would like to have an answer.

Mr Owen: I can introduce you to a few people.

Mr Haggerty: But we are often criticized for this, and we could perhaps lose our seat if somebody put the boots to us.

Mrs Henriksen: My advice to you, Mr Haggerty, is, please do not do that.

Mr Haggerty: Pardon?

Mrs Henriksen: My advice is, do not do it and do not write a letter to the parole board on behalf of someone who is coming up for parole. The board has to be seen to be impartial, and if it appears as though there is some sort of pressure being put on the board, it could put both you and me into some difficulties.

Mr Haggerty: Have you had any requests from any members in the past years?

Mrs Henriksen: In the four years that I have been there, or close to four years, I remember one person doing that. I think it was—

Mr Haggerty: What was your response?

Mrs Henriksen: "Thank you very much. I will consider this along with all others."

Mr Haggerty: I see, a general letter.

Mrs Henriksen: Yes.

Mr Haggerty: But somebody could interpret that that person had some influence on the board.

Mrs Henriksen: That is exactly what I am saying. It is not a very wise thing to do.

The Vice-Chair: I have a couple of quick questions. With regard to serious offenders, I am curious to know, are there any serious offenders who have been on parole who have been reincarcerated in regard to sexual assault, or has there been anybody who has been on parole who has been charged with murder, to your knowledge, from your board?

Mrs Henriksen: Do we have any figures on that?

Mr Sandhu: We have general figures on all parolees who are convicted of murder, but not of sexual offence. We do not know of any.

These are simply what we call our high-profile cases. These are essentially the ones the media would have reported on. Generally speaking, those who reoffend while they on parole are handled by courts and are processed in the normal way.

The Vice-Chair: I was trying to determine whether it is from the provincial parole board or from the federal parole board where this offender has been released on parole and has been charged with murder.

Mr Chitra: It is a rare and unusual thing, sir.

The Vice-Chair: I know, but I was wondering if there had been any paroled in Ontario who had been charged.

Mrs Henriksen: I think we have, actually. I do remember. We have not tabulated the figures, but I am sure it has happened.

The Vice-Chair: I want to thank you for appearing before the committee today. It has been excellent. Your brief at the start really explained a lot of what you are doing, and the auditor's report certainly looked at what you are doing, and I think we concur with the co-operation needed in regard to making it public, more for the community.

If you have any further input that you would like, drop us a note, help us with our report, and some of the recommendations you would like to see. We would be pleased to have that. I know our researcher would like to have it so that we will deal with it when we make our report. Thank you.

Mrs Henriksen: Thank you very much. I appreciate being here. I do not want to single you out, Mr Fulton, but you are interested in this. Please come and listen to a parole board hearing at some time. If you would like to, I would like to arrange that. I will let you go; I will not keep you in the prison.

Thank you very much, everyone.

The committee adjourned, at 1436.

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Legislative Assembly of Ontario

Standing Committee on Government Agencies

Agency Review:

Ontario Student Assistance Program Appeal Board

Second Session, 34th Parliament

Monday 26 February 1990



Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Monday 26 February 1990

The committee met at 1459 in room 228.

AGENCY REVIEW ONTARIO STUDENT ASSISTANCE PROGRAM APPEAL BOARD

The Chair: My name is Norman Sterling. We are on the record now. I would like to welcome you to the standing committee on government agencies. Perhaps you could introduce yourselves. Do you have a presentation that you would like to make to begin with?

Ms Donio: Perhaps we could just introduce ourselves and the context the board operates in within the branch that we are responsible for, and then we could respond to your questions and concerns.

The Chair: Okay. Go ahead.

Ms Donio: I am Jan Donio. I am the director of the student awards branch, part of the Ministry of Colleges and Universities. Our branch is part of the northern relocation project and now is functioning in Thunder Bay.

Ms Kuszner: I am Jo-Anne Kuszner. I am the manager of appeals at the student awards branch and the Ontario Student Assistance Program Appeal Board is administered from the section that I am the manager of.

The Chair: Are you both from Thunder Bay then?

Ms Kuszner: Yes.

Ms Donio: Yes.

The Chair: Okay.

Ms Donio: We would like to just take a few moments of your time and explain the context in which the board functions within our branch.

The student awards branch is responsible for providing financial assistance to students who are pursuing post-secondary education within the province. The program actually receives about 150,000 applications annually and funds in the neighbourhood of 100,000 students. Those students receive grant assistance, Canada student loan assistance and/or Ontario student loan assistance. The applications are assessed on the basis of need and students are assessed against a number of criteria determining their eligibility.

The appeal process functions initially within the branch. The students, upon their original

assessment, may in fact determine that the assessment was not correct and that all the proper information was not received by the ministry so that they could acquire the amount of assistance they need to pursue post-secondary education. Therefore, they have the opportunity to provide additional information or clarify their status or clarify their relationship to the eligibility criteria in order to ensure they are given proper consideration for the assistance.

Once they have gone through the internal appeal process within the branch, each student then has the right to be heard by the appeal board. They can provide additional information or further substantiation of their case, or simply provide the same information which was given to the branch when they originally applied.

They are assisted in preparing their case by financial aid administrators in their institution or financial aid administrators within our branch who provide assistance to those students who are attending private vocational schools or who are attending school out of province or out of country.

The case is then prepared internally and presented to the board. Three members of the board sit in a conference call with the documentation in front of them and assess the factors to determine if the student is or is not eligible to receive assistance under the program.

That is just a basic picture of how it functions within our organization. Jo-Anne works more intimately with the board and is probably able to provide you with answers to most of your questions.

The Chair: Thank you, Jan. Did you want to say anything before questions, Jo-Anne?

Ms Kuszner: I think Jan has outlined the process pretty well how it has been. I have been manager of appeals for almost two years now and have been part of the process that moved the student awards branch from Toronto to Thunder Bay. I have been part of the process that has kept the appeal board functioning throughout this transition, so I think I can probably update you on anything you would like to ask about how it is functioning.

The Chair: Could I just ask a few questions at the beginning? I hope that members will bear

with me, as I am going to catch a plane this later afternoon. I am going to have to leave a little bit early, so maybe I could just lead with a few questions.

How big is the student awards branch? How many employees would there be in Thunder Bay?

Ms Kuszniar: We have approximately 120 right now?

Ms Donio: It is 121 person-years.

The Chair: And how many would be in the appeals section of the student awards branch?

Ms Kuszniar: We have 12 positions.

The Chair: Can you tell me what the costs are? I am interested, in terms of decentralizing government—you know, not only for northern Ontario but for eastern Ontario, where I happen to come from—what are the costs, particularly in terms of an appeal section, where there would be, I would imagine, a fair bit of communication? Is that communication normally by telephone, or is it written, and what are the costs associated with doing business in Thunder Bay?

Ms Kuszniar: Okay. I will tell you first about the relationship between the appeals section and the OSAP appeal board.

When we say that there is an appeals section with 12 members, this relates to the entire process that is known as the appeals process in the OSAP appeal board, but it does not necessarily mean appeals in the sense of what the board is thinking of. It is a program unit that reviews any cases that may require additional documentation. So the meaning is slightly different. We are looking at upwards of 10,000 applications that may require some type of additional documentation, but they are not an appeal of the type we think of for the board, just to make it clear that we do not have 12 people working on the OSAP appeal board.

The way the board functions in its sittings is by teleconference. It was like that when—

The Chair: Perhaps you can go back. I am not interested in the board at this stage in the game. I am interested in the first appeals section, because although it is not formally under what we are examining today, it is sort of part and parcel of what the other part is about.

The appeals section of the student awards branch attracted my interest in that in the last statistics we had, there were something like 1,600 or 1,700 appeals to that first level of appeal. I think that was for 1987-88. How many appeals were there in 1988-89?

Ms Kuszniar: The types of appeals you would be describing there as the 1,600 would be of a

certain type of case, a complex type of case having to do with family inability and family breakdown situations. In 1988-89 it was almost 2,000, probably around 1,900; I do not recall the exact figure.

The Chair: You mentioned before that about 10,000 require some degree of clarification. In other words, it is kind of what you would call almost a mini-appeal of sorts.

Ms Donio: Actually, it is working with the application to edit it appropriately so the computer can handle it. We do not consider them actual appeals. It is more to make up for an inappropriate computer system that cannot function properly, so it is done by the appeals section.

In terms of the relocation or the move to Thunder Bay, the actual appeal process is carried out by telephone, but most of it is documentation. We have to see in black and white that you are a citizen or that you did reside in a certain area. The fax machine is just wonderful in terms of ensuring that we have access to that information. We have actually found that the appeals section functions more smoothly in Thunder Bay than it did in Toronto. In Toronto it took us about six or seven weeks to process an appeal and at this point it takes us about 14 or 15 days.

The Chair: What is the reason for that? Is it that the phones are ringing less?

Ms Donio: There are several reasons. Actually, when people contact you, they have a definite issue. Second, we have reorganized. Relocation is a terrific time to revisit how you do your work and in relocation we have been able to reorganize ourselves. We also have accessed our computer system on line, which has allowed us to access the information more effectively and make decisions more quickly.

The Chair: In the last figures we had, there were 1,600 appeals to the appeals section of the student awards branch and a very, very high number of them were successful. I forget what the figure is.

Mr Pond: About 71 cent.

Ms Donio: About 70 per cent? Yes.

Ms Kuszniar: It was 70 per cent in that year you are mentioning.

The Chair: Why is it so high? It sort of makes us question whether or not the instructions are clear or the criteria are clear or just what. Why is it so high?

Ms Donio: Perhaps one of the main reasons is the current policy that we function under in the program was written and developed in 1978. A

number of social and family factors have changed considerably over the past decade in the province. In 1978 most of our students tended to be sequential students from secondary school to post-secondary school, family units tended to be more stable than they are today, and our policy was written around those kinds of factors. We are now in the midst of a policy review, because when I became director a year ago, my first sense was, if 70 per cent of our appeals are founded, we should be funding them, then our policy should somehow cover those kinds of students. So right now we are in the midst of a policy review to look at the various eligibility criteria.

1510

The Chair: What are you basing your granting of the appeals upon if you have a policy document from 1978? Are you doing it basically at the whim of the people involved? How are you determining that? You are saying that you are dealing with a 1978 policy that does not take in the social factors today. Have there been ministerial policy directions to you?

Ms Donio: Most of it tends to work from, as Jo-Anne said, a family breakdown situation or case, and originally, in 1978, there were many less family breakdown situations reported. Jo-Anne could probably give you some numbers as to the cases we now look at. Family breakdown is defined within the policy, but it was not the same number of cases. Therefore, it was defined as a special circumstance or a special issue as opposed to now, when it is one in three students who come from a broken family and lack that financial support from that family unit.

Mr Morin-Strom: If I could just follow up on the chairman's point there, he was getting at, under what authority are you changing the policies? I think you had suggested before you were working under a policy that was set in 1978 and you are finding that it is inadequate, so on these appeals you are taking into account some other considerations to make the decisions. Is that being done on an ad hoc basis or—

Ms Donio: No.

Mr Morin-Strom: —how has that changed?

Ms Donio: I guess I did not explain myself very well. It is within the existing policy that was established in 1978. However, they were seen as special circumstances in 1978, and if we go back to that point, I think family breakdown is probably the best case. We did not have the same number of students coming from families where parents were separated and neither of those parents wanted to support that child.

The policy defines family breakdown as an appeal situation. It defines quite clearly the documentation you need from a social worker or clergy—substantial documentation. Now what has happened 12 years later is that there are more cases like that, so what we need to do is to say, should there not be a way when you apply that it is no longer an appeal but perhaps part of the ongoing policy?

The Chair: Out of the 2,000 cases, how many would be the family breakdown?

Ms Kuszniar: About half of them would be.

The Chair: So if the policy was altered so that on application we could supply the necessary evidence, you would wipe out half of the work of the appeals branch?

Ms Kuszniar: You would wipe out half of that type of case, yes.

Mr Morin-Strom: When we look at the 10,000 at the earlier level of applications that did not need appeal, yet you needed clarification of the applications, because I guess you had not made a decision to that point, was a large percentage of those the same situation?

Ms Kuszniar: You mean, could it be something where it could be defined as part of the policy?

Mr Morin-Strom: I am saying, of those 10,000 that you said the computer could not handle and you had to do manually and that is why you have many of your staff in Thunder Bay, are many of those cases being handled manually because they include family breakdown as well?

Ms Kuszniar: No, not really. They would be lesser types of issues, issues maybe relating to smaller bits of the policy rather than really large issues as to whether or not the family would have to contribute, perhaps appeals or circumstances having to do with the amount contributed from a particular asset or some particular smaller issue.

Mr Morin-Strom: Does your documentation on the program explicitly state what your policy is in terms of family breakdown situations, and do all students know exactly what the criteria are for expected support in the case of family breakdown?

Ms Kuszniar: There is an administrative manual which describes the documentation required to describe a family breakdown situation such that it would be accepted by the appeals section, and each of the colleges and universities in Ontario has a financial aid administrator whose role is to counsel and assist students in

making application to OSAP and in assisting them with appeals, so that person is there to assist the student to do that.

Mr Morin-Strom: But in the documentation, in terms of instruction, I presume when a person applies for OSAP he receives some kind of a manual—I see there is an instruction manual—which presumably gives the student an idea as to what the rules are going to be and what kinds of information he is going to need. Does that information that goes to the student indicate to the student that there is special consideration, or does he only find that out if he pursues the case of a denial to the point of taking it to appeal?

Ms Kuszniar: There is a section in that booklet that describes that there are appeal procedures, but it does not extensively describe the documentation for these types of appeals, no.

Mr Morin-Strom: So could it be that many students who may in fact have a right to additional assistance are not getting it because they have been discouraged by the initial decision and have not had the perseverance to proceed to an appeal?

Ms Kuszniar: I would be more concerned probably about the student who might not have even applied to OSAP. The student who has actually made contact with the financial aid administrator probably has a fairly good chance of having been advised, but you are right, there would be some who may not know the full details of what they could be eligible for.

The Chair: There are approximately 50,000 refusals a year, from the figures you have provided us, is that correct?

Ms Kuszniar: Did you say 50,000 refusals?

The Chair: Yes. You said there were 150,000 applications and 100,000 received something.

Ms Donio: Yes, roughly.

The Chair: So of the 50,000, you are getting 1,600 applications approximately, 2,000; you are getting about four per cent of people who are appealing.

Mr Morin-Strom: Do you do any studies in terms of numbers of students who actually continue with school dependent upon whether they have been accepted or refused OSAP? Do you have any idea as to whether refusal to get financial assistance results in significant numbers of students actually being denied college or university education?

Ms Donio: We have just been working, through our policy review, to try to determine that, as well as to try to determine the number of

students who never apply, who are on that outer perimeter in terms of not pursuing because they do not feel that financial assistance is available. At this point in time, there are no studies to that extent available in Canada. The only ones we have reference to are American.

Mr Morin-Strom: That would just seem to be very valuable information to—

The Chair: Mr Owen asked—

Mr Owen: About some other points, if I can—

The Chair: Does anybody have a question on this area?

Mr Fulton: I think we have to come back to some other stuff later. I just want to go back to 1978. I am not really sure how far I want to take this, but what is magical about 1978 in terms of family breakdown or separations and so on being such an important factor in your process?

Ms Donio: I do not think anything is magical about 1978 except that is the last time that there was an OSAP policy review. The policy at that time was written around the kinds of students who were pursuing post-secondary education and their situation and was written around the basic concept that students who are pursuing post-secondary education would receive more assistance to pursue an undergraduate degree than a graduate degree. Therefore, there was the whole concept of grant assistance being provided for the length of time it normally takes to complete undergraduate studies, and we have grant eligibility periods, and was written around the basic concept that students, for a certain number of years after they have finished secondary school, are considered dependent on their parents and the family has a certain amount of responsibility in contributing to a student's education.

1520

Mr Fulton: Mr Chairman, I would appreciate it if you would be able to listen to this, because you are a lawyer. My understanding—and you or Bruce may want to correct me, because I am not a lawyer—is that in a family breakdown situation there is no legal requirement for either of the parties in a separation agreement to provide for post-secondary education. That is a voluntary act on the part of one or both of parents. I stand to be corrected, but that is my understanding of the Ontario law.

The Chair: Are you going to pay me for this opinion, Mr Fulton?

Mr Fulton: I could not possibly afford your outrageous fees. I am just curious.

The Chair: A separation agreement is only an agreement between the two estranged spouses and has really nothing to do with promises to children of the arrangement. There are certain rights in law that children have for support.

Mr Fulton: I am just very curious. Trying to tie the two things together, that this family breakdown and the financial burden are somehow the same, I do not quite see where one has a great deal to do with the other.

Mr Owen: Can I just intervene here?

Mr Fulton: I know you would. That is why I left the door open for the lawyers, because they always get their \$50 worth in somehow.

Mr Owen: I think that, whether the parents are together or separated, the student loan program operates on the assumption that the parents are going to help the children to some extent. I think that sometimes when the parents are not estranged and are living together parents still refuse, and when they are estranged sometimes they do not help their children. But when they are separated, sometimes the complications of their being separated further complexes their ability to help the particular student. And there is a larger number of marriage breakdowns. That is why since 1978 there is a larger number of students from that situation now requiring help. They are simply saying that because of that, they are going to, in this review, try to look at reassessing whether it should be an appealable matter or something to be considered as a right, providing the proper documentation that is filed from the outset. Is that correct?

Mr Fulton: Whatever he said.

Mr Owen: Did you understand me?

Ms Donio: Yes.

Mr Owen: And was that correct?

Ms Donio: Yes.

Mr Fulton: Mr Chairman, I knew I would get a legal response. That is why I invited your attention, and I appreciate your doing that. I do not think the argument I was trying to make was about financial ability or parental responsibility. I wanted to establish, first, that there is no legal requirement in terms of family breakdown and the legal process in this province for one of the other spouses to take on that obligation. There is no legal requirement. I am not talking about moral requirements or anything else, or parental responsibilities. I just wanted to establish that.

Mr Morin-Strom: Did you get a definitive legal judgement on that?

Mr Fulton: You just got it from me and it will not cost you a dime, Karl.

Mr Epp: I think what he is saying is that OSAP is not responsible for all the separations that are going on in the province.

Ms Donio: Thank you. I will be able to sleep tonight.

The Vice-Chair: I guess it is Mr Owen. Is that correct?

Mr Fulton: No. He was interrupting me, but I will pass the floor for the moment.

Mr Owen: I have a number of areas that I wanted to cover. The first thing I wanted to cover was dealing with handicapped students. I think that often in situations that I have seen where there have been handicapped students it is sometimes more costly for those particular students to even attend university in the first place. Aside from their challenges of getting around and getting into classrooms, there is often a greater cost to them and to their parents. I wanted to know what you were doing to address that particular matter.

The other side of it is even after they graduate and are expected to repay loans, often they have fewer opportunities for employment and for larger income, by way of their employment, to pay back the loans which had been made to them to assist them.

I wondered if you could address both of those areas. First, even where they are getting family help, sometimes it is still an unfortunate burden to the families financially. Second, what about the greater difficulties of trying to repay after they are into the workforce?

Ms Donio: Jo-Anne can probably give you significant details on the first one, in terms of disabled students and the appeal process. We do, through the appeal process, as is allowed in the policy, provide additional assistance to disabled students to try to compensate them for some of their costs. For example, the normal transportation costs of a nondisabled student would be X and we would try to meet the transportation costs of a disabled student. However, the maximum within our program often stops us from meeting all of their needs.

The disabled student has a number of resources available at the institution as well as going through vocational rehabilitation and ourselves. In the policy review, we are trying to look at how that can work together to meet all of the needs of disabled students.

The population of disabled students, to our benefit, has grown substantially.

Mr Owen: At the post-secondary level.

Ms Donio: Yes. Jo-Anne can perhaps give more detail on the kinds of issues that we face in terms of disabled students and the appeal process.

Before that, most of the loans given to students are Canada student loans. There is a forgiveness program by the federal government which allows their loan to be forgiven should they meet the eligibility criteria under the disabled program, so their assistance is completely forgiven.

Mr Owen: That is under the federal; what are we doing provincially or what is in the works for doing it provincially?

Ms Donio: Provincially, we are looking at the same kind of program.

Mr Owen: Any idea of what the timing is on bringing it on?

Ms Donio: We hope, as we meet with Treasury tomorrow, that it would be within the next fiscal year.

Ms Kuszner: What I could add is that through the appeal process a student who required a specific aid to attend post-secondary school could appeal to have that cost covered, something having to do with transportation or having to do with some particular difficulty he has in the post-secondary environment. They could appeal to have that cost covered. As Jan said, though, there are limits on all of our assistance, whether it be loan or grant, and that is as high an amount of assistance as any student could receive, disabled or otherwise.

Mr Owen: Do you think those maximums will accomplish helping the disabled student?

Ms Kuszner: As they stand now?

Mr Owen: Yes.

Ms Kuszner: I think there could be costs that some students could have that would be beyond what our maximums would allow us to assist.

Mr Owen: Is there anything in the works contemplating some special assistance in these special categories or situations?

Ms Kuszner: As Jan said, we are in the midst of a policy review and disabled students are a major part of that review.

Mr Owen: That is going to be a major part of it? That is reassuring.

Ms Donio: We are working with the Office for Disabled Persons and the Ministry of Community and Social Services to have some kind of consistent approach.

Mr Owen: If I can go on to another area, for every complaint I receive from students who feel

they should be getting help and they are not, I probably have as many complaints from people who say that the loans are being abused. They complain that the students are getting loans and they are going to Florida for their vacation. They complain that the students are getting loans and they are driving sports cars around the campus. Because you are in your position of seeing it all hopefully, can you tell us how these students are able to qualify and manage all of these extras? Is it because they are over a certain age and they do not look to their parents, although I know some complaints that I have received are students who are under the age where they are still supposed to look to their parents? Is it because they are lying? You are there. We are not. We just have the complaints. Can you give us some guidance or knowledge from where you sit?

Ms Donio: Students never lie; they just do not read the form properly.

Mr Fulton: Could we underline that?

1530

Ms Donio: Let's just talk about some numbers for a few moments, because this was a concern I had when I came to the branch. We provide 45 per cent of our assistance to families whose combined gross income is less than \$15,000. We provide 75 per cent of our assistance to families whose combined gross income is under \$25,000. To me, that says that a substantial amount of our money is going to the right place.

There are a number of students and parents who may provide inappropriate information on the application form. That information regarding income is verified through the Department of National Revenue. We get permission from the parents and the students to receive information from their income tax forms. We run that against the information they have provided to us on the application form, and when there is greater than a five per cent variance between what they told us and what they told Revenue Canada, we then manually, through our verification section, get in touch with them and look at whether we owe them more money or they owe us more money.

But that is after the fact, so if, in error, a parent puts down that he made \$15,000 instead of \$150,000 on our application form—

Mr Owen: Have you had that?

Ms Donio: We have had different ones, yes.

We then do not follow up with that until a year later by the time we have gone through this process. So our current process is not upfront auditing; it is really a rear-end verification process. But we do find them and we do

prosecute them, if necessary. That student may have a lot of money and your constituent may have an appropriate complaint. Every complaint, from your constituent, from their boyfriend whom they just broke up with and is who mad at them, from their neighbour, from whomever, we follow up on all of those as well as the Revenue Canada ones.

In the review, we are looking at how we can perhaps have more of a front-end audit process to eliminate some of those concerns with the program.

Mr Owen: In this review, where are you with regard to addressing this very problem?

Ms Donio: Within the review process, we have simply gathered substantial information from the United States, European countries and across Canada. We have identified what issues—such as you are raising here today—have to be looked at and hope to have a sense of where we can go at a global level by the spring, with some specifics for the program by the fall after considerable consultation.

Mr Owen: Could you also assist us with regard to the difference between the federal assistance programs and the provincial assistance programs?

Ms Donio: Yes. The federal Canada student loan program actually started in the 1960s. It is a program which is administered by the provinces and the policy is decided and determined by the federal government. We have a certain amount of flexibility around the administration of the policy, but there are other criteria that we do not have any control over. We simply administer the program in the sense of—

Mr Owen: You administer both, though. Is that what you are—

Ms Donio: Yes, we do. We administer the Canada student loan program only from the point of assessing the student for assistance and then providing the loan document so that he can go to the bank and acquire that assistance. Any follow-up with that student, in terms of collection of that loan or any writing off of bad debt, is done federally.

The provincial assistance programs consist of two components. One is grant. Prior to 1978, our magical year, you had to negotiate \$1,000 in Canada student loan before you could access any grant assistance. It was determined at that time that perhaps that was a barrier to students pursuing post-secondary education and that in fact if there was not the need to take a loan and if the first money they acquired was grant, perhaps

those from the most needy families would be more willing to pursue post-secondary education. At that point in time, the grant assistance was put first in terms of students being assessed, so they are first assessed in terms of grant assistance, then Canada student loan assistance and then Ontario student loan.

The grant assistance within the province of Ontario is approximately \$180 million annually. Loan assistance, which is actually the paying of the interest on the loan while the student is attending post-secondary education and six months after completion, as well as defaults or bad debts, comes to approximately \$11 million or \$12 million annually.

Mr Owen: Do you encourage students to just get assistance federally rather than provincially?

Mr Donio: That is not possible within our program. Our program has sandwiched Canada student loan between the grant and the Ontario student loan, so you are assessed for one and then, given that you got that money, you are assessed if you need more here and then, given that you got that money, you are assessed if you need money from the third. Therefore, right now we have serious problems with Canada student loan. They have not updated the rates at which they pay assistance since the mid-1980s. Therefore, when there are problems with the federal program we cannot really point the finger at that program, because students do not see it as separate from the provincial programs.

Mr Owen: I know that you help some students when they are out of the province obtaining an education. What is the criteria that you follow there? Mr Fulton here is talking about going back to higher education, he tells me. What if he wants to go and study at the Sorbonne? How can he get assistance to study at the Sorbonne?

Ms Donio: Out-of-province and out-of-country institutions are funded, provided that they are public institutions and therefore publicly funded by that province or publicly funded by that country. We have a book that lists all the ones that are public institutions around the world. Assistance is provided for all courses of study, based on the same criteria and the same amount of money as you would get if you studied in the province. So we do not consider that someone's tuition fee may be \$7,000 should he want to go and study at an institution in the United States. We only fund to the maximum of what you would get for studying in Ontario.

Mr Owen: What if it is for a course which is not available in Ontario?

Ms Donio: We still provide only for the—
Interjection.

Mr Owen: No, it is not.

Ms Donio: Pardon?

Mr Owen: He said that every course is provided in Ontario.

Mr Lupusella: With so many universities available in Ontario, I think that all the courses are available.

The Vice-Chair: Let's let her answer the question for Hansard, which is having a problem hearing all these conversations. Then we will move on to Mr Lupusella after you answer Mr Owen's question.

Ms Donio: We have a maximum tuition fee and it is what is allowable.

Mr Owen: No matter whether it is available or not available?

Ms Donio: At this point, no.

Mr Owen: You do not insist that they take it in Ontario; you let them choose where they want to go for it. Is that correct?

Ms Donio: Yes, we do.

Mr Lupusella: I have a few questions. The first one is in relation to the role of the board. Do you think that the role is clear within the present parameters or that changes should be made? As you know, the OSAP policy review is currently in progress and will eventually clarify the role of the board. The question which I would like to raise before you is, are you part of this review and what kind of recommendation did you make in relation to the role of the board?

Ms Kuszniar: I am generally pleased with the formal role of the board as it is stated to be and with the way it is functioning. But as you have said, we are in the middle of the review. Because of the complexity of a lot of our policy, I sometimes think the role of the board becomes mired in the complexity of the policy. I think if the policy is clearer and more up to date, we may have a clearer delineation between the board and the policy interpretation function of the student awards branch.

Mr Lupusella: In relation to the structure of the board, which is part of the role of the board as well, it has been suggested that a chairperson be appointed and that formal precedents be followed in the decision-making process. What is your position if such policy is going to be adopted by the OSAP review?

Ms Kuszniar: Right now, the way the policy is interpreted and the type of policy it is, I do not

think it is really amenable to a formal precedent type of system. The interpretation of OSAP policy, both at the branch and at the board, is very much designed to give great consideration to individual students and individual cases, which can be a conflict if you were trying to set a very formal precedent system, I think. The way it is set up now, I do not feel that those would be really compatible for that reason.

Mr Lupusella: If a chairperson is going to be appointed eventually as a result of such a review, are you going to be pleased, or do you think that is not worth it?

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Ms Kuszniar: When I originally started with the OSAP appeal board a year and a half ago, that was the first thing that struck me, that there was no chairperson. I thought, "Gee, how does this board function without a chairperson?" In fact, it functions fairly effectively. I think it could work either way. If there were a recommendation that we go with the chairperson, I would think that would worth examining, for sure. It functions fairly effectively the way it is now, but I think that could work as well.

Mr Lupusella: The other question which I have is that we heard comments made about the number of appeals before the board; 1977 was mentioned as the critical year in which you had a high number of appeals. The appeals have been launched either by the board or by the financial aid administrators, am I correct; one of the two?

Ms Kuszniar: The appeals are generally sent through the financial aid administrator to the branch, which then convenes a hearing of the board. That is the process. The student will generally go through the financial aid administrator to request a hearing at the board. That is how it would usually work.

Mr Lupusella: But the referral can come from the financial aid administrator on behalf of the student or against the student? That is what I do not understand.

Ms Kuszniar: Oh, no. The financial aid administrator acts as an advocate for the student.

Mr Lupusella: Oh, as an advocate.

Ms Kuszniar: They present the case, they gather the documentation. It is their role to make sure the student gets everything he is entitled to.

Mr Lupusella: The other issue which I would like to raise before you and I would like to know your position is whether the board structure should be more formal. As I heard your presentation, the hearing is very, very informal,

is just an exchange of information and so on, but based on the review which is going to be finalized in 1990, if the hearings must be more formal, what is your position going to be?

Ms Kuszniar: I think the board could run in a more formal way, but I think we would lose certain things by having it run in a more formal way. Right now we run by teleconference, and this allows a very speedy turnaround time on student appeals to the OSAP appeal board. Almost always the case is heard within two weeks. If we go to some type of system where there is going to be, say, an in-person meeting, I think we will lose that speedy turnaround. I think that is one concern.

Mr Lupusella: The last point which I would like to raise is, because of the OSAP policy review, and considering that you express certain feelings about the changes that might take place, did you express your views before the OSAP's policy review or is this the first time that you are expressing your own position in relation to these issues?

Ms Kuszniar: Regarding the appeal board and the appeals process in general?

Mr Lupusella: Exactly.

Ms Kuszniar: I am one of the staff members from the student awards branch who acts as a researcher and resource person for the review, so one of my roles is to describe how the process works at the current time.

Mr Lupusella: Do they get in touch with you?

Ms Kuszniar: Yes, I have been in contact.

The Vice-Chair: Mr Epp, you are next.

Mr Epp: Generally, I want to say that I am pleased with the kind of service that the OSAP has given to students. You know, my office gets in touch—I have two universities in my constituency—and I am generally pleased with the work that is being done.

I do have a couple of questions, though. One is with regard to this review itself. When do you anticipate concluding that review?

Ms Donio: The next fiscal year. We started on the review about—

Mr Epp: So by the end of 1991, 31 March 1991?

Ms Donio: Yes. We are hoping that we will have recommendations, actually, by the fall of 1990. We are working towards that objective.

Mr Epp: In looking at that, are you looking at reorganizing the form itself, the application form?

Ms Donio: We have actually reorganized the application form this year. When I came to the branch, I wondered how someone without a university degree could ever complete the application. We have reorganized it slightly this year so that the information we ask for is more clear, and we have reorganized the booklet.

We are working towards a new technology also within the branch. Our technology is the same age as our policy. We are hoping that will then allow us to keep the information each year on students so they would not have to continually provide the same information. We are hoping they will allow us to deal more directly with the students, those kinds of things.

So yes, these are going hand in hand. We also have a business review going on within the branch at the time to determine if there is a more effective way to be organized and do business, now that we have relocated to Thunder Bay.

Mr Epp: Is there an age limit that you need to be under in order to apply for OSAP?

Ms Kuszniar: No.

Mr Epp: So you can be of any age? If you are 80 years old, you can apply?

The Vice-Chair: There is still hope for you, my friend.

Mr Epp: At that rate, I am close, but—

Mr Fulton: There is not much hope for him.

Mr Epp: The reason I asked is about the organization of the form too, and someone in your branch looked after this particular problem earlier this year, but it was a gentleman in my constituency who is 48 years old who was applying for OSAP, needed the assistance, and was somewhat upset by the fact that you wanted his parents to sign it, the form, and that he had to fill in about 30 years of employment history, from the time he left school to everything that he has been doing since he was 18, 20, whatever, to the time he was 48 years old. I called your branch and they said it was not quite necessary and they were going to let him know. This guy was a former reporter and he was somewhat incensed by the whole operation that you were asking for, and there was nothing in there to indicate that he did not have to fill all this out if he was 48 years old or 55 or 80 or whatever it was. I am just wondering whether you are going to take that into consideration.

You look somewhat askance at the whole thing. I am just wondering—I mean, that did happen to me.

Ms Donio: In all due respect, I was the individual who spoke with your constituent.

Mr Epp: Were you the one?

Ms Donio: For approximately an hour and a half, and walked him through the application form. There were places which did identify whether you were dependent or independent on the form and where you then identified whether you needed your parents' signature or not. It is not delineated very clearly and required considerable work to decipher. He acknowledged that he had misinterpreted that part of the application form and we assured that he had completed it correctly right to the end. But yes, the application form as it currently appears is a very difficult application form to complete and is not clear.

Mr Epp: You are not going to get a lawyer to do that, you are going to get somebody else to make up the new form, is that right?

Ms Donio: To design them?

Mr Epp: You are not going to have a lawyer design the new one, you are going to get somebody else.

Ms Donio: We have worked to design the new form, but it has been reviewed by our legal advisers—

Mr Fulton: That is your second mistake.

Ms Donio: —and our communications people, and our freedom-of-information people, and everyone else the form must go through.

Mr Epp: I just wonder, with respect to the people who might violate their particular assurances that what they have put on the forms is accurate, is there any—aside from neighbours or rejected boyfriends or girlfriends or whatever reporting this—is there any particular monitoring that you do on a regular basis?

Ms Donio: Yes.

Mr Epp: Like you take every 50th application or whatever?

Ms Donio: Through Revenue Canada records, we verify information on a little over 10 per cent of all of our application forms annually, and that is a comparison with what they said to Revenue Canada and what they are telling us.

Mr Epp: So there is a regular monitoring mechanism?

Ms Donio: We call it our verification process, and yes, that is done.

The Vice-Chair: I think Mr Fulton maybe had one more question, did you, Ed?

Mr Fulton: I think one anyway. Just to back up a little bit, I just want to clarify that you are indeed—Mr Epp made reference to the complexi-

ties of the application form. That has been brought to our attention and I think you acknowledged it. Are you in fact revising the form to make it less difficult for university applicants to follow it through?

Ms Donio: Yes, the form has been revised this year. It is a very different, new application form this year. As we are able to acquire and initiate our system changes, then we can in fact make it much less complex. But yes, the application form and the kit is a very different kit this year.

The Vice-Chair: When is it available?

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Ms Donio: It will be in the schools for 1 April.

Mr Fulton: So hopefully, the criticism that Mr Epp's constituent referred to is going to be eliminated.

Ms Donio: Yes, we have highlighted it; we have coloured it in different ways. Yes, we have worked with communications specialists to try to develop a form and a brochure. Part of the problem is the booklet is very long and cumbersome to use, so we have divided that and we have tried to present the information in a way that is more inviting and more useful.

Mr Fulton: I would like to just carry on and try to pick up where Mr Epp left off in terms of the application. I am more than 48, but I would have the same difficulties as his friend in having parents authorize me, etc. Would I qualify for OSAP? Let's say in eight or 10 months I was out of work and wanted to take oceanography at—

The Vice-Chair: Depends what your income tax form said.

Mr Fulton: That is what I am getting at. First of all, I would have to be at an approved school on your list, which could include a Canadian university or college—almost around the world.

Ms Kuszniar: Right, assuming you were attending an approved institution, your assessment would be based on your income and your assets of the previous year, so it would depend on—

Mr Fulton: But if I were out of work, I would have no income at the time of the application.

Ms Kuszniar: If you had no income, you would be based on no income, but at the time you would still be based on assets, so you could have some assets that could play into this.

Mr Lupusella: Your boats would be taken in.

Mr Fulton: We might pursue that later. Just to go back up again, I did not hear earlier on how many people were transferred to Thunder Bay.

Ms Donio: We have a staff of 121. Five people relocated with the branch to Thunder Bay. Over the past year and a half we have been working fairly hard to build the organization in Thunder Bay. We now are filling our last 20 positions, so we have over 100 staff right now in Thunder Bay. Only five carry the corporate history of what happened before.

Mr Fulton: How many were transferred or applied from places other than Thunder Bay; 100 or so have been moved to Thunder Bay?

Ms Donio: All the rest of our staff, besides five, come from outside of the branch and come from Thunder Bay, either from other provincial ministries or from the private sector. We have actually recruited a fair number of people from the banking industry in Thunder Bay, but all of that recruitment has been done within Thunder Bay.

Mr Fulton: I want to go back to the parental status. How would you substantiate? You place so much significance on 1978, because all of a sudden, where it appeared that the parental status had a substantial bearing on the merits of an application—

Ms Dion: Perhaps I have put too much emphasis; 1978 is the last time of a policy review.

Mr Fulton: Whatever the year was, it does not really matter. The issue is, how would you substantiate the status of an applicant's parent, in the absence, say, of a divorce agreement or divorce?

Ms Donio: You are right. It is these grey areas between being a family unit that is living together and a formal divorce where we may get involved. Basically speaking, the parent who has custody and control of the child is the one who would complete the application.

Mr Fulton: But if the student is at the University of Western Ontario, I mean, really, no parent has custody.

Ms Donio: It would be the student who has legal custody.

Mr Fulton: But they would not have. That is what I am getting at. How would you establish? If a student is over 18, certainly if he is over 21, there would be no such thing as legal custody.

The Vice-Chair: That was awarded then by the court, and it will stay with them until they are 21 probably.

Mr Fulton: Not necessarily at all—until 18; 18 is the age of majority in this country, and there is no status for post-secondary education under the

Family Law Reform Act or the Divorce Act of Canada. I am sorry, Mr Chairman, we discussed this briefly before you arrived, I think, and I am just very curious, because most of those students over 18 would not be a factor in the same sense as the minor child being in custody of one or the other parent.

Ms Donio: If we do get applications from a student who, by our definitions, is still supposed to be dependent on his parents, and we are expecting that he is going to complete the application, if he makes a representation to the financial administrator at the school that he is not and that the parents are refusing to assist him, even though our expectation may be that they would assist him, then this is one of the appeals of the family breakdown type that we were talking about. That student would basically have to show documentation that he is not part of that family unit and not receiving support.

The Vice-Chair: Could I just follow that up for a second? There is a lady who is a single parent. She has a daughter or son who is in university. She has custody of whoever it is and remarries. Now the income of the spouse is about what it is supposed to be. Does that student qualify for a loan? The parent has now married.

Ms Kuszniar: Generally, we expect step-parents to contribute in the same way we expect natural parents to, but this is one of the areas where we do get into appeal situations where the step-parent, for various reasons, is unable and/or unwilling to contribute to newly adopted children. That is a situation where we might get into appeals fairly frequently. Generally speaking, a step-parent is expected to contribute.

The Vice-Chair: But you do not allow those appeals?

Ms Kuszniar: We do allow some of those appeals, yes.

The Vice-Chair: And there are some that you do not?

Ms Kuszniar: Yes. It would depend on the documentation provided.

The Vice-Chair: Then really what that is saying—it is not being clarified. There is a matrimonial breakup and custody is awarded to one parent and that parent cannot afford to send that person to a university. In a year's time that parent gets remarried, and all of a sudden now there is some money from the spouse. You are saying that now she does not qualify for a loan or grant.

Ms Kuszniar: That could be. If the family income changes substantially, that could be. There could be a situation like that, yes.

Ms Donio: It would depend on a number of factors. It would depend on when the custodial parent remarried. If they remarried when the child was two and the step-parent adopted the child, then we would be considering, under our policy, both parents' incomes. If the custodial parent married when the child was 16 and the step-parent never adopted the child, then we would, within the policy, be looking at the custodial parent's income. That is the kind of case where in the appeal process a number of factors are taken into consideration.

The issue is that we want to assess whether there is any kind of financial dependency or relationship with the child and if the student will be getting financial support from the parent. The way many states do this now is to look at the parents' income tax records, and if the child is claimed as a dependent or any of the allowances allowed to a student are claimed by the parent, then he assumes dependency. But that is the kind of issue we have to address within the review.

There is also an increase in the number of cases we have to deal with now regarding sexual and physical abuse. We have found a considerable increase in the last few years in the number of cases where: "You may tell me I'm dependent on this person, but because of these special situations, I'm not. I don't want to ask this individual for financial support," because it is either a threatening situation or an abusive one. We found a dramatic increase in those cases.

Mr Fulton: I am not quite satisfied yet. You can substantiate financial returns for financial status through the Income Tax Act. You sign that thing away at your own risk if it is not accurate. We are not talking about children per se; we are talking, generally speaking, people 18 and over. I would imagine the average university student is probably 20 or better. From the moment of separation to a divorce can take a long time, and there need not be any paperwork or documentation from that point A to point B, unlike your annual income tax return, which you can use to verify information that you are given. How would you verify, since you raise the issue, that the lack of parental support is due to family breakdown?

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Ms Kuszner: Okay, I can tell you how we do that. Basically we have a series of documentations, which has been developed over the years, that we look for to represent the fact that the student is separated from that family unit. There is one set of documentation that relates to the step-parent types of situations and another set

that relates to natural parent situations where the student is separated from the unit for one reason or another. The documentation takes the form of third-party letters, statements of the fact that the student is not involved in that household any longer, letters from professionals such as social workers, doctors, counsellors, whoever might have been involved with the family, a statement from the student describing what the situation is in that family and, if possible, a statement from the parents describing what the situation is. That is the type of documentation we look at to see what is happening in that family unit. We would be looking for documentation generally that demonstrates that the student is divorced from that family unit.

Mr Fulton: How do you determine the award of a grant versus a loan? I realize a grant is nonrepayable and so on and there is no interest on loans. Is that correct?

Ms Donio: While they are studying there is no interest and for six months after they complete studying there is no interest, and then they are expected to negotiate payments with the bank.

Mr Fulton: If a student applies for a grant, is that awarded or not awarded on its own merit, or would you say, "We can't give you a grant, but we can give you a loan"? Or is that an entirely different process?

Ms Donio: Actually, they go through all three. They start with grant and then go to Canada student loan and Ontario student loan. The grant program is, as we said, basically aimed at undergraduate degrees. You have eight grant eligibility periods for which you are eligible. Whether or not you received student assistance is not an issue. If you have pursued post-secondary education for eight terms, then you have used all your grant eligibility periods. The grant program was originally designed to fund undergraduate study at post-secondary institutions. In order to help the student get his first degree, we would give grant money. There are a number of students who would qualify for loan assistance only, because they have already acquired or have been part of eight terms of study at a post-secondary institution.

Mr Fulton: Eight terms being eight semesters?

Ms Donio: Yes.

Mr Fulton: What is the maximum amount of a grant in any given time frame?

Ms Kuszner: It is different for different types of students.

Ms Donio: For sole-support parents it is \$3,500.

Mr Fulton: For a university year or is that for—

Ms Donio: Oh, it is per term. I am sorry.

Mr Fulton: Per term being the full school year, generally speaking, September to May? Is that what you mean, or for a semester?

Ms Kusznier: A semester.

Mr Fulton: Which would be four months.

Ms Donio: For a four-month period, yes. We consider two terms in your regular year of post-secondary study.

Mr Fulton: So it would be \$7,000 in any year.

Ms Donio: For a sole-support parent, yes. For independents it is \$2,500; for dependents it is the same; for those studying at private vocational schools it is \$1,700.

Mr Fulton: What about a loan? Is that the same amount?

Ms Donio: No. Canada student loan assistance and Ontario student loans differ. Right now, Ontario student loan is \$900 per term maximum. Canada student loan is \$105 per week of study. They allot their assistance differently than we do.

Mr Fulton: Do you have any way, other than the income tax annually, of knowing whether a student at university, perhaps away from home, is supporting himself outside of the family and your grants or loans, working at the local grocery store or some other way of supplementing his income? It would not necessarily be seen during the one or two semesters of the loan period.

Ms Donio: Students are allowed to supplement their assistance through work, on a part-time basis, up to \$1,000 per term. I would have to verify that. Which means you can earn \$1,000 and not have to claim it. Once you earn in excess of that, you have to claim it. In 1987-88, 17 per cent of our students claimed additional money above that \$1,000. The only way we can actually verify that is through income tax records. So we may, down the road, find more students who did not tell us about that money, but we cannot find that information up front.

Mr Fulton: As I recall, you mentioned a figure of something like \$11 million or \$12 million a year that is not repaid through the loan system. Is that correct?

Ms Donio: That is basically the cost of the Ontario student loan program, which is the loan portion of our assistance, not the grant portion, not counting the student loan. It is our own loan

program, which will give you up to \$900 per term.

Mr Fulton: Oh, I thought it was the unpaid—

Ms Donio: It actually pays the interest while you are studying and for six months after you have completed your study. It also covers the interest relief program, which is a program designed for those who, when they should start repaying their loan, are not employed and therefore not able to. We will carry it for an additional 18 months as a maximum. It also covers any other related costs to the loan.

Mr Fulton: What is your rate of recovery on your loans?

Ms Donio: Actually, our rate of recovery is fairly high. You cannot compare it on an annual basis. Last year, we had a four per cent default rate, but you cannot compare the—

Mr Fulton: What does that four per cent relate to in dollars, though? Is that four per cent of the applicants or four per cent of \$12 million, four per cent of what?

Ms Donio: It was four per cent of the applications that were processed.

Mr Fulton: Representing how many dollars?

Ms Donio: I would have to get that figure for you. I did not realize we would get to that.

Mr Fulton: Can you guess?

The Vice-Chair: It is in your report, on page 15, is it not?

Mr Fulton: Are you talking about \$100,000, \$1 million or what?

The Vice-Chair: It is in your annual report. You have read all this material.

Mr Fulton: You have got the research officer at your left shoulder giving you all the answers, Mr Chairman. You have us at a disadvantage.

The Vice-Chair: You have that in your book.

Mr Fulton: No, I have not. I have got it here. He took it back from me.

The Vice-Chair: You do not have that book?

Mr Fulton: It is in the range of \$1.5 million?

Ms Donio: Is that 1986-87?

Mr Fulton: It is 1987-88.

The Vice-Chair: You do not have any statistics with you on that?

Ms Donio: No, I am sorry. I thought we would be talking specifically about the board. We did not bring that information.

Mr Fulton: I will have to go through that, I think, in a little more detail.

I guess that last question I have on that line is, what procedures do you use to secure the repayment of the loan and how far do you go? I, like Mr Epp, am reflecting certain concerns that, from time to time, are raised in my constituency.

Ms Donio: Please understand this, the major loan program is the Canada student loan program. I would say nine out of every 10 of your constituents who write to us are really writing about the Canada student loan program. When it comes to collection, it is that loan that they are really writing to us about. I should also tell you that the federal government is now looking at how we collect in the province of Ontario.

We have a fairly systematic process in place. The bank notifies us that the student is in a default situation and has not initiated any payment on the loan. This will be approximately eight months after the student has left the institution. They have a six-month interest-free status, but by the seventh month they are to start repayment. The bank normally gives them 60 days. They identify that there is a student in default.

We then receive that information and review our files to see if we have current information about the status of the student; ie, do we know where he lives, is he acquiring other assistance through other programs of ours and is back in contact with the bank? Sometimes we can find them. They have moved on to a graduate scholarship program, so we say: "Oh, we know the student. Here is where they are living now." When the bank contacts them, usually they will go and set up their repayments. Should they not, it is sent to us with the appropriate documentation to substantiate that the bank has in fact been in touch with the student. This is one of our biggest problems. We are not buying a service from the banks, so often they are quite quick to ensure that we, as the guarantor, supply them with assistance as it is often administratively costly to find someone and to get him to come and negotiate his loan.

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We pay to the bank the money owing upon proof of documentation that it has attempted to contact the client and that the client is in default. We then forward that account to our accounts receivable section, which then attempts to find the student in other ways, to identify that he is now in a default situation and what that means to him. At that point, we try to get the account back in good standing with the bank, because once a student has defaulted with us, it becomes more difficult for him to acquire assistance in the

future. Often when they are aware of that fact, they are very quick to go to the bank.

Once accounts receivable has been unable to find the student, it is then sent to the central collection service of the Ministry of Government Services, which then skip-traces to find the student, searches for bank accounts to find the student, in order to take the appropriate action to ensure that some repayment is made. That is basically the process that is followed.

The Vice-Chair: Any further questions?

Mr Fulton: Yes, just one last one in another area. It is quite different but of particular interest to me, and that is the reference you made earlier about transportation needs with respect to disabled students. I suppose there are two distinct problems. One is getting the student from home, which may be out of town, to the university of his choice, and the other is the on-campus problems of that mobility. Can you give us some examples of the kinds of problems you run into? I realize it can be expensive and it can also be a real deterrent to someone accessing university.

Ms Donio: Jo-Anne can probably give you very explicit examples. Before we go on with that, there is accessibility assistance provided to all of the institutions to ensure that their campuses are accessible to students. But, as we are aware through the appeal process, often there are other issues to be dealt with. Maybe you could share some of those things around transportation.

Ms Kuszniar: Transportation is not something that has come to my particular attention a lot in the last year, except in the form of the cost of getting to the campus. Off hand, I cannot describe to you an individual situation that I have seen which is anything different from that. The reason is because, generally speaking, what we fund through OSAP is something that has particularly to do with that student being at school. For instance, if the student is in a wheelchair, he is probably already in a wheelchair.

Mr Fulton: But, and I mean this is in an administrative way, your problem would not be getting the student from here to the University of Ottawa; it would be dealing with him on campus or from his place of residence to school and back?

Ms Kuszniar: Yes, local transportation is usually the issue; getting from the residence of the student to the campus locally.

Mr Fulton: I was reading in the weekend paper that the majority of students now are looking to move out of Toronto, from the sound

of it, to go to other campuses, if I understood the article correctly.

Mr Owen: Dalhousie and McGill.

Mr Fulton: Right.

Mr Owen: I would question some of that.

Mr Fulton: Are there problems there that you think we could deal with as a Legislature? Are there any recommendations that you would want to move forward, either now or at another time, perhaps in your next annual report, where we could be helpful?

Ms Kuszner: I would think that overall the concern that would come to me has to do more with the amounts available to individual students rather than particular things we will fund. In my experience, the cases I have seen where we have not been able to provide full assistance have to do more with a level, a maximum, not being able to necessarily cover that student's needs.

Mr Fulton: One last question.

The Vice-Chair: Could I have your attention for just a minute? We better decide something here, if we are going to finish today or are we going to keep getting to the last question all the time.

Mr Fulton: I have one more, I promise.

The Vice-Chair: I have got to be out of here in 10 minutes, 4:30 at the latest. Karl wants to ask some questions. Are we going to have them back tomorrow? Can we finish in 10 minutes or not?

Mr Fulton: I need 60 seconds.

The Vice-Chair: Okay, we will finish in 10 minutes then. Is that agreeable?

Mr Morin-Strom: If you take 60 seconds.

Mr Fulton: Given that you said, as I recall, 75 per cent of your applications are for families with a combined income of less than \$25,000, in order to provide more for the students, should we not look at reducing the in-house administrative cost in order to put more money where it is needed, and that is in the hands of needy students?

Ms Donio: Actually, the administrative costs, when we look at the program, are significantly lower than most other provinces. If we look at Alberta, which processes 60,000 applications and has a very modern computer system, they have a staff of 82 people. We are looking now as to how we could do business more efficiently. What we would like to do is provide a better quality of service to your constituent and our client, and we feel that we can do that fairly efficiently with the resources that we have.

Yes, I think in terms of disabled and certain special-needs groups that are now accessing

post-secondary education, there are very special questions that we have to deal with. In the review process we are trying to ensure that we look not only to 1990 but to the next decade in the kinds of demographics that will be in institutions and how we can meet their needs.

Mr Morin-Strom: I would like to ask you some questions, finally, on the appeal board itself.

Ms Donio: Okay. We came prepared for that one.

Mr Morin-Strom: We have been talking about everything but the appeal board, I think, and obviously most of your work and your staff are concerned with other issues. The appeal board actually sees very, very few cases. I think we have to ask whether the appeal board does provide an important function and whether you think it should continue in operation as it is or be changed. Given the very small number of cases, is it a valued institution?

Ms Donio: I think when you are acquiring assistance based on financial need, it is extremely important that you feel, when it is a public program, that it is not always the bureaucrat making the final decision, that you do have the option of going to yet a third party and having your case heard. The number of cases heard in the previous year were perhaps greater than before that.

I find it a useful process to have that in existence. Certainly other provinces are currently looking at our model, that that does in fact save you—the public perception is that there is access to the assistance, there is someone beyond the bureaucratic interpretation of the policy.

Mr Morin-Strom: Is it being used to make new or different decisions in different types of cases which may set precedents, and are you looking at the kinds of decisions they make for the development of an independent body that may in fact establish what might become a new policy for your program in terms of your own appeals process, which handles the vast majority of the appeals, actually?

Ms Kuszner: The decisions of the appeal board are not precedents in a formal sense, they are very individualized decisions about individual cases, but my understanding is that over the years since 1978, or however far back we have information, it is often these types of cases that have gone to the appeal board that have been sort of examples of areas where new types of policy might be needed. So I think yes, you would be able to examine those types of cases.

As Jan said earlier, these types of cases which we call family breakdowns used to be very rare and were always going to the appeal board, and then it was finally decided, "Well, no, these aren't so rare any more and these can be handled as a policy within the student awards branch." So that has been what has happened in the past.

As the manager of appeals, I am very in favour of maintaining the appeal board. I feel that it operates very reasonably, as far as finances go, operating by teleconference. I like the fact that it has representation from the student group, members of the public and financial aid administrators in the colleges and universities to give, as Jan said, another level outside the branch an opportunity to hear a case if that is what the client wishes.

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Mr Morin-Strom: The cost appears to be almost insignificant. I mean, it is far less than the cost of any one of your 120 people working on OSAP in total in Thunder Bay. The number of cases being so small, though, I wonder if there is either a problem with lack of knowledge that this appeal process exists, or could there be a problem in terms of time frame that, by the time you get to that process, it is too late and the student is already committed to doing something else that year instead?

Ms Kuszniar: I think the time frame does have something to do with it, not necessarily in this way, though. I think in the two years that I have been in the appeals section, there has been a great difference in the turnaround time on appeal. This year a student is receiving a decision much faster. I sensed last year we had more cases going to the board because, by the time the student had waited many, many weeks to get that initial decision, it was too late for him to make another plan and he then may have appealed to the board. I was thinking that through as just part of something that may have happened this year as a result of the fact that we had better turnaround time this year.

Mr Morin-Strom: You are saying, because students had proceeded with their school year under the expectation they would win their appeal—

Ms Kuszniar: Yes.

Mr Morin-Strom: —and when they did not win it, they went then to the further stage of appeal.

Ms Kuszniar: That is just a thought I had this year, because we have had quite a dramatic difference in the turnaround time on appeal decisions in our branch, so I think that might

have been part of it. By the time students had waited for a really long time to get that initial decision, they were even more upset because of the time frame involved. So I think it could play a role. The time frame may play a role.

Mr Morin-Strom: Why do you think such a small percentage of cases get appealed to the board?

Ms Donio: I think we have to look at it in the context of numbers. Approximately 70 per cent of the appeals are won initially. That leaves us with 30 per cent of the cases. A significant number of those people would not be able to substantiate their case, would be appealing perhaps for grant assistance: "I want more grant assistance because I went to school in 1956 and got my degree. That shouldn't count." I mean, you have used up your grant eligibility period. You have gone, you have done it; so in getting the information back, it is not an interpretation, it is a matter of facts, did you or did you not use it? There is no flexibility on it. So oftentimes when they will submit, in getting the information back, they are not able to appeal.

When we look at other provinces, the number of people going to the appeal board, having a third step, since we are the only province that really has a third step outside of our bureaucracy, we have nothing to compare it to. In the past year, the letter that went back to students identified that, "You have the right to go to the appeal board; please contact your financial aid administrator," so that any student who had appealed at least saw that that was an option. Perhaps there is more that we could do around that issue.

Mr Morin-Strom: That sounds helpful. At least students are aware that it exists.

Ms Kuszniar: We did take note of that when we first came to the branch, which was in the summer of 1988. We wondered that: Was there a need to increase the profile of the appeal board? We did try to increase the profile of the appeal board and explain the role of the board more clearly to financial aid administrators and make it clear that the branch was in favour of using the board, not by any means wanting to discourage the use of it.

Mr Owen: I just wanted to ask a supplementary to what was being asked.

The Vice-Chair: If you make it quick. We have one minute.

Mr Owen: Yes, very, very quick.

The odd time I will run across a student who says there is not time, in the way you operate

your board, to be assured that he will know whether he has the money now and he quits and goes out to work. Could you tell us what the timing is? Where are we with that timing? I know you said you have improved it. From what to what?

Ms Donio: Can I just clarify? There is a very important issue to take note of here. This program does not have a deadline prior to the school year. You can apply for OSAP throughout your school year. So you have a student who may have applied for OSAP in December, well into his school year. In terms of going through the appeal process, that may take three weeks. He would get a denial and then he would be going to the board. The board would take probably 14 days as a maximum to hear that case, but he may well be too late in that, because we are one of the few provinces without a deadline.

For example, in one of our fellow provinces, if you do not apply for assistance by 30 June, you do not get certain types of assistance or you have a lower maximum, but that allows the student to plan better. In our program, without a deadline, because they can apply so late, we cannot rush that process at that time of the year for them.

Mr Owen: Okay. If he is starting university in September, he can apply for assistance—

Ms Donio: In May.

Mr Owen: And within four to five weeks he would know for sure whether he is getting it or not? So that would be weeks, if not months, before he is starting.

Ms Donio: If he did apply. Yes, if he did apply.

Mr Owen: Really? That is not the story I was getting.

Interjections.

Ms Donio: We would be willing to look into any specifics around a case, but if in fact they applied and they provided the correct documentation and information and they were eligible to

attend the course and it had been processed by the financial administrator and sent to us—but the problem is, we do not get many applications in June. We do not get many applications in July. Most students apply for assistance in late August, September, October. They are living off their summer earnings, “Oh, I guess I’d better apply now.” We process a lot of applications in September and October. We are very, very busy from mid-August to the middle of October; 10,000 applications a week are being churned through.

Mr Owen: So what you are telling me is really quite the opposite of what the students are sometimes telling me, and that is, you will accept their applications as soon as they can get them to you?

Ms Donio: Yes.

Mr Owen: In fact, what you are saying is you would welcome them earlier rather than later?

Ms Donio: Yes; and with our new computer system, we are hoping we can get it out to them sooner, with their previous year’s information.

The Vice-Chair: That is a real good note to finish our deliberations on. I want to thank you very much for taking the time to come and appear before the committee. If you have any input that you would like to put into the report that we will be doing, we would appreciate you dropping us a note for our researcher so that we could maybe have some suggestions that would be helpful, and we would really be very pleased to hear from you.

Ms Donio: Thank you.

The Vice-Chair: The committee will adjourn until 11 am tomorrow morning.

Mr Owen: I would like to say also that all of us have found today very, very helpful with what we are doing from day to day as MPPs.

The Vice-Chair: Right.

The committee adjourned, at 1627.

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Legislative Assembly of Ontario

Standing Committee on Government Agencies

Agency Review: Ontario Training Corp

Second Session, 34th Parliament
Monday 5 March 1990



Speaker: Honourable Hugh A. Edighoffer
Clerk of the House: Claude L. DesRosiers

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Monday 5 March 1990

The committee met at 1502 in committee room 228.

The Chair: I call the meeting to order. My name is Norman Sterling. I am the chairman of the standing committee on government agencies.

AGENCY REVIEW

ONTARIO TRAINING CORP

The Chair: This afternoon we have in front of the committee the Ontario Training Corp. The committee met at two o'clock this afternoon and was briefed at that time by our researcher, Mr Pond, whom I am sure many of you have talked to over the past few weeks.

We would now like to invite you, Ms Birkenmayer, president and chief executive officer, or Mr Lewis, the chair, to introduce the members of your delegation. Then you may want to make a presentation, which is the normal course of events in this committee, and then committee members will engage you in some questions thereafter.

Mr Lewis: Perhaps I could start by introducing Sandra Birkenmayer, who is president and chief executive officer of the Ontario Training Corp; Anne Kerr, who is our vice-president of finance and administration; Barbara Zuppinger, who is vice-president of training services; and Bob MacBean, who is vice-president, investment funds.

We thought what we would like to do is I would make a very brief introduction inasmuch as I am sort of a nonexecutive chairman and then we would ask Sandra to talk a wee bit about the Ontario Training Corp. In fact, we have a small presentation we would like to make as well. So perhaps I could begin by trying to put the Ontario Training Corp into some historical perspective, because we are a start-up company.

I guess our genesis goes back to September 1986 when Ontario's Training Strategy was first announced by the government. It had six components to it, one of which was the Ontario Training Corp. This then led to a report, which was prepared by a committee chaired by Dean Muncaster. That report was brought down in March 1987, almost three years ago today.

That committee, chaired by Dean Muncaster, was really a tripartite committee. It was com-

posed of labour, business and people in the educational and training communities. For example, Cliff Pilkey then was president of the Ontario Federation of Labour, and Cliff was sitting on that committee.

The government accepted the report of the Muncaster committee. In March 1988 the then Minister of Skills Development, Alvin Curling, announced the fact that a board of directors had been put together, 13 of us, chaired by me. In April 1988 we were incorporated under the Ontario Business Corporations Act and in June of that year we found our first employee: Sandra Birkenmayer was recruited as our president and chief executive officer.

In September of that year, 1988, a memorandum of understanding was agreed to among the Minister of Skills Development, I guess Management Board and the board of Ontario Training Corp. So in a sense at that point in time we had our mandate agreed upon.

Our mandate basically is to stimulate training in the private sector in the workplace. I guess the theory behind our niche or our role is the fact that there is a well-established infrastructure for job entry training, whether it be universities, colleges, apprenticeship programs. There was a lot of resources being committed to job retraining for people who are displaced in the workplace, but there was the feeling that in terms of training of existing workers and employees in the workplace in Ontario there was a deficiency. Our job, and we will get into how we perform this in Sandra's presentation, is to try to stimulate training in the workplace among existing employees. Our focus is on the private sector, the theory being that governments at all levels, to the extent that they are committed to training, can direct and solve or determine the level of training commitment that would take place, the private sector being a different matter.

We were set up as a schedule 2 corporation. Because of our focus being with the private sector, it was felt that (1) we would have more credibility, (2) we might be able to move more decisively, and (3) we would be able to have commercial objects, because it was always our wish and intent that our work stand the test of the marketplace and that in terms of our investment fund activity, for example, we not be in the

granting business. We are in the business of doing joint ventures to stimulate training.

Our board of directors is comprised of 13 people, and we have had four constituencies represented. We have organized labour; we have business; we have what I would call the training sector; and then we have universities and colleges. So we have a broadly constituted board. Our board has been active in the sense that we have four board committees in addition to performing the usual roles of a board of directors. We have four board committees, two of which are housekeeping in nature: the audit committee and the human resources committee, and two which are more active in terms of supervising our main core businesses: the investment committee and the external relations committee.

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Having said that, I think it is important that I communicate that we are organized very much like a corporation and that it is a supervisory board as opposed to a managing board and that the business of the corporation is run by the executives of the corporation. Sandra Birkenmayer, as our president, is very much a chief executive officer of the corporation as distinct from, say, an executive director. That has been a deliberate strategy of the board and one that we have been committed to. So with that brief introduction, if I may, I would like to turn it over to Sandra.

But one final comment I might make before doing that is: I mentioned the four constituencies, one being labour. I mentioned the background of Cliff Pilkey's being on the original Muncaster committee and we have three members on our board right now who are from the Ontario Federation of Labour. But you should probably know as a committee that at the present time those three directors are not participating in the activities of the corporation. They have not resigned from our board. We have had informal conversations. We have formally requested an opportunity to meet with the Ontario Federation of Labour. We sense very much that the issues that are causing the labour community not to participate at this point in time are probably—what is the best way of putting this—larger than the Ontario Training Corp alone. Their reasons for not participating do not stem from specific concerns that they have vis-à-vis the Ontario Training Corp, although some of the things in terms of our mandate might cause them some concerns with respect to their view of some of the policy issues with respect to how training is handled in the province.

I would like to emphasize, though, that when Ontario Training Corp was being put together labour participation was not only important, it was very active, and we welcome the day when not only labour continues to be represented on our board but will be back being active again.

So, Sandra, with that, over to you.

Ms Birkenmayer: As the chairman indicated, our mandate is quite focused and really very clear, which is to stimulate training in the workplace. Since 73 per cent of the businesses in Ontario at this point do not offer any formal training to their employees, we have quite a challenge ahead of us.

We are implementing our mandate in three very specific ways. First, we established two investment funds aimed at increasing the quantity and the quality of workplace training materials and workplace technologies. Second, we are working with training practitioners to ensure a higher level of quality in both trainers themselves and in the training that they deliver. Third, we have developed an on-line database of training materials, resources and services to help businesses make better and faster training decisions.

So let me go back very briefly and tell you what we have done and where we have come to in each of those three businesses.

On the investment side, we have two funds, called the training materials fund and the training technology fund. They are, as their names suggest, intended to stimulate projects that would end up with better materials and also better technologies that can be used in the delivery of training. When those funds were set up, one of the first things that we had to do was set up some guidelines or some rules on how we would be guided in making those investment decisions. We are not in the grant-giving business; this is truly a business venture with private sector partners.

The rules are in fact quite simple, and there are three of them. One is that it fit the mandate of the corporation, which is workplace training. Does it apply to a broad number of businesses? Could the material or the technology that is being proposed apply broadly in business and industry? We simply do not have the money to start investing in something that would be specific to one individual firm.

The second broad criterion is: Is the training or technology proposal one of quality? In other words, we have people who understand instructional design and we want to ensure that whatever is being developed delivers what it is supposed to

deliver and delivers it in the most appropriate way.

The third criterion, since we are in a business, is: Does it make business sense? Are the returns commensurate with the time and the money and the risks that are involved?

Once we established those guidelines or the rules, we then had to generate the ideas and the proposals. To do that, we are working with both sides of what we call the training equation: the supply side and the demand side. The supply side are those people, businesses and firms that in fact develop training materials and training products or develop training technologies. They are more easily identifiable and they certainly have many ideas as to what is needed in the marketplace. But we also felt it was important to work on the demand side: the users of training, the ultimate users, the businesses and industries out there.

We want to work with groups and we are working with groups of end users, be they unions or industry associations of various sectors. We want to stimulate the demand for training and help them articulate, really clearly articulate, what their training needs are so that we can ensure that the projects that we would be entering into financing meet the real needs of business and industry that are out there. So we are stimulating the demand and trying to match that on the supply side and linking the two all together in our investment program.

So what has happened is: We established those guidelines and announced them in February of last year. Since then we have generated what we call files, about 200 various proposals have come to light. The projects have ranged all over the map and every possible type of training, from shop floor to supervisory to senior management and in all formats of delivery—computer-based, videodisc.

In this current fiscal year we have \$2.7 million to invest in these types of projects. As of, I guess, last week we had invested \$2.1 million in five projects and we have about three more on deck that are coming for approval, we hope, in the next couple of weeks. So the full \$2.7 million that is available to us in this fiscal year will be fully committed by year-end.

The benefits of this type of an investment program are already beginning to flow. There are new products that are now beginning to be developed and getting out into the field. Some products, which already existed, we have helped to convert. One of them was from a US-based program to Canadian standards. Another was a conversion in technology. Another was from a

sports application. A certain training technology had been, first of all, designed to meet sports needs. That really was not our business, but it turned out that in fact there was great applicability in industry for this particular project, so we assisted in the conversion of that project. We are also ensuring that many of the products become available in the French language as well as in English.

Several of our proposals have ensured that products that do exist or are being developed will be more broadly distributed. We are finding that there are a lot of training products around and not necessarily a lot of good marketing and distribution. So we try to ensure that what does exist becomes more broadly distributed.

For all the companies we have worked with, I think they have all come away better than when they first came to talk to us, whether or not their proposal was eventually financed. This occurs because we help them in the design of their business plans. They come away with better market intelligence. They usually have sounder financing and a better concept of their financing. Our involvement often helps to lever other dollars.

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We put them in touch very often with other types of strategic partners. Some people are good at production and they do not understand distribution. Some people are weak on the training and we put them in touch with good training designers. There is a much higher quality of training that is going to be developed as a result of our involvement than there would have been without it.

Our second business is what we are calling professional development. This is the one where we are concerned with the quality of the people who are delivering training in the province. That is your full-time trainers, your part-time trainers, people who are in, say, supervisory jobs who are expected to deliver training once in a while, do some training in the workplace, and it is also those people who manage the training function.

We want to provide leadership in enhancing the training skills of all of those people who are involved in workplace training. What we are going to do is address issues such as ensuring the development and implementation of industry-accepted standards of excellence. We want to try to get the training community to be almost a self-managed profession; they are not quite at that stage yet. We want to bring the best of what is going on internationally in training to bear on what is going on in Ontario. We want to help

create a truly competitive training sector in this province. We want to also improve the management of the training function.

To date we have identified through research some of the skill requirements of those training professionals. We have developed networks of co-operative ventures with all of the key players in the training business: the Ontario Society for Training and Development, the Personnel Association of Ontario and the National Society for Performance and Instruction. We do not intend to be out there in any of our businesses competing with other people. We work within existing networks and we strengthen and we lever. That is what we intend to do in terms of the professional development.

Our third business: This one is going to be a little more fun because I am going to actually do a demonstration. We are going to show you what this business is all about. The challenge in this business was to create a database that contains everything employers or employees would need to know in order to make a training decision.

At the moment people make training decisions from a pile of catalogues that they may have on their desk or files of brochures that were sent to them from their favourite training vendors. Nowhere in the province is there one comprehensive source of information on what is available and where it is available and when. The criteria for the database were that it had to be comprehensive, had to be current, had to be accurate, had to be accessible in English and French, had to be available across the province and had to be extremely user-friendly. We could not deal with just sophisticated computer users. We had to be able to have a system that you and I and everyone else who was not necessarily sophisticated in the technology could talk to.

Where are we? The hardware and software are in place. The data collection is almost complete. We have in fact over 50,000 items already entered on to the system. We had to do some upgrading of software in order to manage this project, particularly because of our requirement to have not only two different languages, but we needed a system that integrated both so that if you were dealing in one language you could very easily move over into the other one. That had to be created. That simply did not exist anywhere.

Those systems are just in final acceptance testing at the moment. We had to get a telecommunications system so that anybody across the province could connect in to us, whether you be in Wawa or Sudbury or Sioux Lookout. We have pilot sites actually now up and

running. We are finalizing our marketing and sales plans and we are aiming to launch this database in the spring of this year, about two months from now.

I am going to actually show you some of the features, if you will bear with us for a second. We are going to have to put the screen up behind me here. It is always more fun to see what I am talking about, if we can get it straight.

The intended users of this database are primarily your training and human resources people, but in a lot of companies that are not that large to have those types of professionals, your general managers or very often the president of a small company may be the one who would want to access this to show you what it is that would be there. This is, as I say, a prototype. We are in final acceptance testing of the system at the moment, but there is enough up here to show you at least an example of what we have.

First of all, if you are sitting in Wawa, it would be just as easy to key in. You just go through the telecommunications network and you come on line here and the first thing you see, obviously, is our welcome screen. It will be, as you see, in the two languages.

You have a choice here in then pursuing your search in English or in French. The real beauty of this system, which unfortunately I cannot demonstrate today, is that had you chosen to go in French, for example, and you wanted to look in French, we only list the courses or the subjects in the language in which they are available.

If you were looking for a course in stress management and you were looking in French and nothing came up that was available and being offered in French, you could immediately just tell the system to give you what was available on that same subject, immediately, in English and it could do so. You would not have to go back and start your search all over again. You can flip back and forth very easily as you are doing a search. That is because we have developed a very powerful thesaurus behind the system.

Let's take a look at what is in the database by looking at the main menu. These are all a series of databases. It gives you an idea of what the content will be. We have listed all of the offerings of your private vocational schools, community colleges, universities and this is the full-time, the continuing education, and the business and industry type of business education and business courses that are available.

Then we have the seminars and workshops. These are seminars and workshops that are offered by anybody. They could be offered by a

professional association. They could be offered by a private vendor. Anybody who is offering seminars and workshops on any topic related to workplace training would be listed here.

Self-study materials are those things which are self-explanatory. They are off-the-shelf products. They could be computer based. They might be a video-based training package, anything of that nature, a distance education.

Then we have training consultants who are all the people who deliver training, what are their specialties, what kinds of things they in fact offer.

You can always go into the system under one of those if you know you are looking for a seminar, or you can go in, as it suggests here, by the organization. If you knew somebody down the street and you thought they offered something, you can just go in and search by organization and we will go through a few searches to show you this.

We will get back to some of these services on the other side just a little bit later. I would like to make one other comment and then we will go into a couple of searches. You can start by going in by any of those categories but when we have the system, which I mentioned—it just is not finished right now—up and running, you will also be able to search across all of those and all you need to say is “environmental issues,” and if that is all and you do not care where it is, it will come and it will say, “If you are looking for environmental issues, there are four things offered in vocational schools and there are 852 in community colleges.” You would go from there. So you can do your search in any number of ways.

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Let's start off with the seminars and workshops. By starting with a very broad category, we will show you how this kind of narrows down. Let's see what the database has on government.

Immediately it starts to narrow the categories down to help you narrow your search, to try to find out what it is in fact that you would be looking for. Let's just assume for the moment we want to take a look at all of them.

There are six items that are being offered nine different times, so let's take a look. This is a very helpful feature. In the courses and seminars, because they are time-specific and region-specific, immediately this will tell you that on the subject you are looking for it is available in Metro Toronto once in August—there is one course available—in eastern Ontario there are several in May and April, and unscheduled there are a few. If you want to narrow your search and know you

only want to do it in Metro Toronto, you would not bother looking at something else.

Let's just take a quick stroll through and see what those subjects were. We chose to look at all of them. Those are the courses that the search would show you. You can continue and go into the detail. Let's take a look at number two, “Crisis Management in the Political Environment.”

This is the lowest level of detail. You have now your actual course here and it says this is one of four screens of description. It will always tell you the organization, the name of the course, the cost, the description of the course—

The Chair: Have you subscribed to this course before coming before the committee?

Ms Birkenmayer: No, nobody is paying us to promote this one.

It is a two-day course and eventually it tells you where it is being offered, the exact time and how you get in touch with the organization.

That showed you a very broad search. You can also, if you know specifically what you want, can go right into it. Somebody was asking us, believe it or not, the other day for computerized litigation support and there is one.

There is another feature of this. It says Q for print. If you are going to want to have a hard copy of what you found under these courses, you just press the Q and while you are finishing your search the system is downloading that information into your own personal computer in your own office, and as soon as you are finished just prints it out for you. You do not have to jot anything down. It will print out the results of your search for you.

This demonstrates how you go in on a very narrow search.

Let's go back to the main menu and go in and take a look at colleges. The searches go very much the same way. Let's go into courses. I would like to show you just the power of this classification and thesaurus system because you need to be able to go in and use a certain word, and the system needs to relate it to all the possible things that could relate to that and that may not even contain the word you are using.

For example, if a high school student said, “I want to be a foot doctor,” it will be interesting to see how the system takes that.

Mr Pelissero: When you say a high school student, how would they access this?

Ms Birkenmayer: We may eventually make the service available to secondary schools for career guidance purposes, actually. That is not

our prime mandate at the moment, but we see sort of spinoff benefits for doing that.

There is no foot in any of those but it found chiropody and would tell you what. It is the same thing if you were talking about computer-assisted design and it would flip to robotics or vice versa. The power of the system is very much embedded in this very powerful thesaurus which is behind it. It also has to be in both languages and they have to talk to each other because if you go in on an English word and you also want French results, it has to be able to do that.

That tells you the power of the thesaurus; I have a problem with that word.

Let's go back into the main menu and you can look at organizations. As I mentioned earlier, let's say you thought that there was some kind of training institution that started with a C and you were not sure what it was. You could just put up C under organizations and it will list all of the organizations that are in the system that offer training that are listed in C. If we were interested in Cambrian College, let's take a quick look at Cambrian. I think we are going to have to narrow our search here. We have 1,413 items that are listed under Cambrian.

If your subject was environment, we could narrow it down; it could be anything, but let's just look at environment. You are back into the same similar types of search we saw before. You could then go into the detail of any one of those courses. It would tell you the same types of things it did for the seminars, where it was offered, what your prerequisites were if it was a college course, how you would get in touch with them, which campus it was being offered at, etc.

That is basically the SkillsLink database. It has been a very fast demo, but we felt it is better to get a sense of it than for me to try to describe it. If any of you would like at some point to come up and have a more detailed demonstration of that, we would be more than pleased to provide it.

To sum up then, we have certainly packed a fair amount into the past year and a half since we were set up. We have a clarity to our mission. We have established our values and our plans, and our infrastructure is in place. Our understanding of the challenges facing the training community have certainly been sharpened. All of our businesses are under way and the direct benefits of those are now beginning to flow. So our plans are laid out and we are certainly pursuing them with enthusiasm and excitement.

We would be delighted to answer any questions you might have.

Mr Kozyra: I have a couple of questions and then one example, for lack of a better term. The two questions relate in some ways. You mentioned five projects approved. I understand, if my information is correct, that is of about 200 that were submitted or reviewed. I think I partly know the answer in that we have heard that these five have about \$2.1 million investment tied to them out of \$2.7 million.

At first it might seem that with five out of 200, either your standard is so very high that 97.5 per cent do not qualify, or you just do not have enough funding. Perhaps you could elaborate as to what that five out of 200 means. If you had \$10 million instead of \$2.7 million, would more qualify just on that basis, or are your standards such and the proposals you reviewed such that projects just do not meet the standards?

Ms Birkenmayer: The 200, I think, is a phenomenon that happens when a new organization starts. There are a lot of people around who have had proposals of one form or another that they have submitted to any number of agencies in the past. My chairman says that happens in the banking business all the time. When somebody new comes, everybody dusts off their old proposals and sends them in.

Many of those proposals were not related to workplace training at all. Some of them were not in fact proposals. They were ideas of some sort and they talked to us and sort of explained what they wanted to do and we explained, "You're going to have to flesh it out a bit and here are the sorts of things you would have to do," and there was no further interest; we did not hear from them again.

The fact that we have approved five, I think demonstrates a number of things. One, it takes quite awhile to develop very good proposals and very complete proposals.

Mr Kozyra: Just on that, do you give them some guidance or framework for developing it?

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Ms Birkenmayer: We sure do. There is quite a bit of upfront work needed to help them. If we have a sense that the training proposal is really needed, it is not just an interesting idea but very much meeting something that we are aware of out there, then we really put our investment team behind them and try to help them build a good training and then business plan.

Mr Kozyra: Of the five, how many had that kind of interaction?

Ms Birkenmayer: All of them. They all were quite different by the time we finished, and quite

different by being much tighter, much better. They knew their marketplace better. We have a very thorough due diligence process when we are looking at a potential investment. By looking in the marketplace and by looking at the financial structuring and the quality of their training and their marketing plans, we have been able to help those companies really tighten up what they want to do, and the chances of their being successful, in terms of the training and the business sides, are certainly far enhanced.

Now, you also raise the question, if we had \$10 million. It is a little early for us to say. We have not to this point turned down a proposal that really needed to be done because there was not enough money there. We hope that we might get to that point, that we will stimulate such a volume of quality proposals that we will have, you know, more to choose from. However, we will reinvest the money that will flow from our making those investments. We are going to pour that back into the business so that more money will eventually be available.

The Chair: So you have not turned down any proposals yet.

Ms Birkenmayer: We have turned down proposals.

The Chair: How many have you turned down?

Ms Birkenmayer: There were approximately 200 files opened—

The Chair: Serious proposals, where you have had a proposal on the table.

Ms Birkenmayer: Bob, a dozen or so?

Mr MacBean: Maybe a dozen, but as you said, anything that is worth doing, we have not turned down. Just as a matter of thought though, each of the 200 was treated as potentially a serious proposal because we felt that you could not just be cavalier in saying no. So there has been a fair amount of time spent in looking at what I would say were some pretty ill-conceived proposals, but I think that is the nature of the beast. You have to do that before you can say no.

The Chair: Perhaps when you go away you can provide us in writing with what those five that you have accepted.

Ms Birkenmayer: Yes, we would be pleased to do that.

Mr Kozyra: This next question relates to perhaps the criteria you use in determining the quality of proposal, because it leads into the union representatives stopping attending and the criticism that I understand was levied. That was

that you are placing too much emphasis—from their sector the criticism was levied—on the the profit-making aspect of these investments. To what extent is that one of the criteria that you use, and how do you counter that kind of criticism? I guess the other thing is, what are you doing to re-establish the union, or the labour, connection?

Mr Lewis: Perhaps I could just make a couple of observations on that point. We are trying to make sure that we do not look upon this as sort of return on investments. It is almost unfortunate we have the phraseology “investment funds.” We really see ourselves as joint venture participants in developing something, as distinct from making an investment. We are not in the venture capital business. Clearly we are investing in training, we are investing in training products, we are investing in training technologies, as distinct from investing in companies, and that has been part of the confusion.

But the fact that we have used the word “investments”—and we feel that a proposal that we are going into with someone to develop a training product or a training technology should be able to meet the test of the marketplace. What we are really saying is we want to go with somebody who we could see being successful, that there will be a demand for it, as distinct from, “It is going to generate such-and-such a profit.” We are not thinking that way.

Mr Kozyra: So why is the criticism being levied by the unions?

Mr Lewis: I think partially it is a question of vocabulary. It is the fact that we are talking investment funds and that it was not coming across that we are not talking return on investment, we are not talking as if we were in the venture capital business.

As I mentioned in my opening comments, I think that the problems with organized labour in terms of its participation are solvable in terms of what the Ontario Training Corp is doing in the training business, given our mandate. There are some issues around the mandate which I think are much broader political issues which we cannot solve in terms of how we set policy at the board level or we cannot solve in terms of how we go about performing our task. They go back to, really, the aegis under which we have been mandated, so that in a sense is beyond our mandate.

Mr Kozyra: So, some amendment to the mandate might help this.

Mr Lewis: I would think some amendment might help, but I think you really should ask that

question of the people in organized labour in the sense that I think they are talking a rather major amendment. They are talking about thinking in terms of our being in the grants business as opposed to the joint-participant venture business, and we would feel uncomfortable, given the way we have been structured as a schedule 2 crown agency, getting into the granting business. I think that would perhaps be inappropriate. There are other mechanisms within the governmental process for making grants and that should not be part and parcel of what we do in the Ontario Training Corp.

The Chair: What is your ownership?

Mr Lewis: We have one shareholder.

The Chair: No, no. What is your ownership with the people you are writing in to the joint venture? What is your asset?

Mr Lewis: We try to be flexible in how we structure it, but I think a good analogy would be that we are going to develop a training product jointly and that we would say we would share in the net revenues of that specific project on a royalty basis or some such, as opposed to having an investment in the company. We would have an interest or an ownership position in the product or the service or the technology, as distinct from the company or companies.

Mr Kozyra: In my opinion, it is just the finest example of training and what can be done with it to turn around, in this case, a failing company. In your database I noticed perhaps there was not a slot for examples that abound now in the corporate world to slot in and to go, whether it is a tour or on-the-job viewing and participating.

A year ago I had the opportunity to tour St Marys Paper in Sault Ste Marie, Karl Morin-Strom's riding, and I was very impressed with the people there who had taken a company that another major pulp and paper producer had basically let start to die and that was on its death bed. Some 600-odd employees were to be thrown out of work and what was left of the company was basically a shell.

In came a new, aggressive American firm that decided to renovate and rejuvenate and brought in, first of all, about \$120 million, if my figures are correct, of new computerized equipment to introduce a new and much higher value added product, a super calendar and paper. Now, that new technology that they brought in needed a workforce that could handle it, so they asked those people, the 600-plus, "Are you willing to be retrained and so on?" Of course, most said yes.

I think it lasted a minimum of six weeks' retraining, for some to a year and a half. Of those who went a year and a half, and some were 50-plus years in age already, some doubled their wages after that because of that training, and it was a tremendous ego builder. Plus the people they could place—and due to natural attrition no one from that original group, as we were told, was let go in the sense of laid off. The company is turning a profit.

Besides this encouragement in the sense that they are retraining and giving the people tremendous incentive as they see their new training skills pay off in the workplace both in take-home pay and job satisfaction, the president was employing tremendous interpersonal skills. It was a hands-on thing. When he took us around, there were about 250 people working. He knew each of them by first name and said, "Good job," "How are you doing?" and so on. It really was an impressive scenario, and I am wondering whether that kind of thing can be tapped in as a fine example of what went right and to encourage others to do so and tapped into your database and then some other program.

The final comment was he said they had no government funding for this but were looking down the line for some to continue their retraining because they felt this was just the beginning. I thought I would share that with you. It may not be news to you, but it certainly was impressive for me. Thank you.

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The Chair: Thank you. I thought we were going to get the question there.

Mr Farnan: Thank you for your presentation. I do want to ask you to be more specific with the committee in the area in which Mr Kozyra initially directed his questioning. That is, I would like you, from your perspective, to tell the committee, as you perceive it, what the major objections of the Ontario Federation of Labour are to the Ontario Training Corp. Obviously, bridges have to be built and you, as the committee, must know what the fundamental differences are in order for these bridges to be built. Could you tell us what the specific areas of concern of the OFL are that caused it to withdraw from active participation so that the committee will know precisely what it is that has to be restructured in order to get OFL participation, because I think this is critical.

Mr Lewis: Perhaps I could respond to that question with a bit of a caveat at first. It is not as if we have sat down with Mr Wilson and had a discussion about Ontario Training Corp specific-

ally. We have asked to have that meeting. It has been said that we would like to have the meeting, so it has not been a case that we will not have the meeting. It just has not occurred yet. I think it has not occurred yet for an interesting reason. Now, I am being a bit speculative in answering your question. I take some comfort from the fact that the three members have not resigned. They have just advised us that they will not be participating for the time being.

Mr Farnan: How long has the nonparticipation lasted?

Mr Lewis: A month. This is a recent development. I do not think Ontario Training Corp is the main issue.

Mr Farnan: No, neither do I, but I think that as a committee we need to get a handle on this, and I do not think we should be sort of pussyfooting on it. I know it is a delicate situation, but I think we really should put the cards on the table.

Mr Lewis: Let me try and be more specific then, but again I want to emphasize I am being a bit conjectural on this because we have not had that meeting. I think the Ontario Federation of Labour believes that training should be something that should start in the public sector. The policy statements have been made where they think there should be an employers' tax for training. They are talking not about training in the Ontario Training Corp sense; they are talking, I think, in job-entry training. They are talking displaced workers training, areas that we are not specifically involved in.

Our focus is on private sector training, and the reason we are focused on private sector is that it is within the realm of government to stimulate training in the public sector. They have other avenues. For that reason, our focus is, by mandate, on the private sector, and we are looking to basically private sector type solutions. We want the private sector to be taking an active interest in and developing it in the absence of another alternative.

I think what the Ontario Federation of Labour is saying is, "We want to think in terms of a model that is a completely different alternative." So that is why I do not feel it is within our realm as the Ontario Training Corp to solve the problem. I do not think the Ontario Federation of Labour feels that either, which is why it is saying, "We are just going to step aside for a while."

We are in discussions with the government and there is talk of taking a fresh look, through the Premier's Council on Technology and so on, at

how the training is delivered in this province. So I think we are very much at this point in time the meat in the sandwich. I do not know whether that has helped you.

Mr Farnan: However, the distinction that you make between private sector and public sector, I am not too sure—and I certainly cannot speak for the OFL. I can only speak from my very limited and perhaps not fully informed understanding of the broad picture. My understanding would be that labour would be interested in the full spectrum of training, not just training for organized workers, but it would be interested in training mechanisms and processes that would also be applicable to workers in the private sector, who may in fact be less likely to get training because they are not in a position where training can be negotiated through the collective agreement.

Mr Lewis: Yes, I would share that.

Mr Farnan: Okay. Now we are in a period of transition, and when we talk to groups like the community industrial training committees and there is considerable apprehension out there as to—you have the Premier's Council somewhere out there and pronouncements being made, and suggestions, but we are not getting the hard documents. We are being teased a little bit in terms of what is coming down the tube. I do not even know if the Liberal members of the committee are aware of what is coming down the tube. I suspect not. They have heard the same teasing phrases from the Premier and Premier's Council, but until we get the Ontario Training Corp definitions on what that stands for, I do not think anybody in the field will really know the future direction.

But the one thing that seems to be abundantly clear is that any training model must have the equal participation of labour in order for it to be a viable model. That is why I would be less than frank if I did not say that I would think that a process such as yours is doomed to failure unless those bridges are built to labour and unless you have full participation of the Ontario Federation of Labour, not just for organized workers, but for all workers across the province.

Now, a couple of questions to the types of programs: In the programs that you have implemented, what level of participation in those programs comes from management, middle management, secretarial or shop floor, front-line workers? Could you roughly break that down?

Mr Lewis: It is a bit early days, but—

Mr Farnan: You do have five projects.

Mr Lewis: We have five. We run the risk that those five are not necessarily a representative sample, but I think we are fortunate in the sense that they probably are. So, Sandra, why do you not speak to them?

Ms Birkenmayer: One of the projects, the first one that we approved and announced, relates to microcomputer training and it is a distribution proposal that will ensure that microcomputer training is in fact available in other than the major urban centres of the province. Of course, microcomputer training applies to almost every level, from shop floor all the way up, so it is very much across the board in terms of the type of employees that it is applicable to.

Another one which we have just approved, and we are doing the final legal work now, relates to an electronics training program which is very much a technical training self-study, as a matter of fact. It is a computer-based, interactive course and one which has been mentioned as a very high priority in the electrical and electronics industry.

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When you are talking about where we are getting input from, in fact we are working very closely with the joint human relations committee of the Electrical and Electronic Manufacturers Association of Canada, which is a labour and management group. They are working closely with us and articulating where their training priorities are. They have been working very closely with us in helping get our SkillsLink project, by the way, up and running. They have pilot sites for us and a number of things.

This is jumping back a bit to your previous question on labour. Although there are some problems at the sort of policy level, on the working level there are still things going on. We hope that is not being interfered with in terms of our ongoing relationships.

Getting back to the projects, the microcomputer training applies very much across the board. The electronics project is very much a technical one. There is a proposal which we are about to approve on management of change. That is more of a supervisory and managerial one. There is a software proposal that relates to managing the training function. It is very much like a technology that will help human resources people and small companies manage training and the human relations function.

One of the technology proposals relates to a course-authoring system on CD-ROM, but where that really comes into play is that it is going to be used to develop courses on occupa-

tional health and safety. We are running the gamut in the projects.

Mr Farnan: What about the size of the companies being serviced?

Ms Birkenmayer: The size of the companies that develop the product or those that will be able to use them?

Mr Farnan: Both.

Ms Birkenmayer: In terms of the size of the companies that are developing, most of them in fact are small.

Mr MacBean: They could be smaller and early in their life cycle.

Mr J. M. Johnson: What do you call small? What size?

Mr MacBean: It can be anywhere from a one-person or two-person firm up to—the largest I think is probably 30 people, roughly, that we are dealing with right now. That is developing.

Ms Birkenmayer: That is the developer side of it. The training industry has predominantly quite small firms. In terms of the companies that would use the product, it could be anything from the very smallest, in terms of, for example, the computer-based electronics one which is a self-study. It could be used by any very small company right up to the large ones. Again, I think we have run the gamut in terms of the potential use of the product by the end-users.

Mr Farnan: Would you be interested in looking at a factor in promoting or granting support to an application as an application that actually services people who are not in management? Actually if you look at the situation as it stands today, the higher you go up the corporate ladder, the more time is given in service training. It would appear to be that compared to other industrialized countries, our people at the lower levels of the industrial ladder get less training. Would that be a factor in your future grants to companies?

Ms Birkenmayer: Yes, it is. We are looking at training at any level of the organization, but one of the things we are doing all the time is looking at what we are calling the balance of the portfolio. Are the projects relating more to supervisory than to technical? We kind of make sure that it does not get off balance that way or in terms of servicing the types of industries or whatever. We are very concerned. In fact, initially, in the first six months, we really were scrambling to try to generate some really good proposals that related to more of the technical and the shop floor because the initial onslaught of

proposals we had were more in the supervisory area. We are aware of the fact, as you are, that that is where the preponderance of training is. So we are stimulating them.

Mr Farnan: I am very pleased to hear that, I must say, and I commend you for it. I believe that a strong track record in that would go a considerable way towards influencing the way in which labour would view this kind of organization. I have a problem at this particular stage, and it is a little bit outside your control, because my own belief is that productivity and skills training and competitiveness thrive best in a situation where there is harmony and work between both labour and management in developing training models, and government, I would add.

That puts me in a situation where I am looking at a state of limbo that you are in. Basically I see you as in a state of limbo, if that is the right expression, or maybe purgatory would be more apt. Basically you have the community industrial training committees out there saying: "What's happening? What's going to happen to us in the future plan?" I think your situation is somewhat similar. You have a mandate and a model but you are missing a key ingredient; you are missing your labour component. Quite frankly, when I look at an organization such as this and it does not have a labour component in it, I have to say to myself, "Hey, there's something really wrong here."

I find that the Premier really is doing an injustice to all the people involved in training in the province the longer he leaves this state of indecision as to what is happening with the Ontario Training Corp. That is my question to you. How critical is it that we have some definitive guidelines emanating from the Premier's Council and the Premier in terms of joint partnership between labour and management in training and then getting on with the job?

Mr Lewis: Obviously it is very important that reconciliation, if that is the right word, take place as quickly as possible. When Ontario Training Corp was put together, it was put together with very active participation by members on the board from the Ontario Federation of Labour. During all the time when we were setting up the investment committees and various aspects, we have had active participation of labour.

We share your view. It is very important that the Ontario Federation of Labour continue to participate. I agree that we are in a limbo period right now, but in the meantime what is happening is that we are still making a very important contribution to the development of a training

infrastructure in the province. Regardless of which model or arrangement is finally agreed to, the work we are doing at the corporation is worthwhile work because we are adding to the availability of good training products and good training technologies.

If we are talking months, it is not a problem. If we are talking years, I would share your view; it is a problem. I am confident that the problems will be resolved and that labour will be back with us continuing its active participation which we have enjoyed so far.

Mr Farnan: In your SkillsLink database, have you the courses and programs offered by the Ontario Federation of Labour and other labour groups in terms of the various offerings they have?

Mr MacBean: No.

Ms Birkenmayer: They are not up yet. We have been discussing the availability of everybody's courses offered generally to people in the province and we have not been discussing things recently, unfortunately, with the Ontario Federation of Labour.

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Mr Farnan: Again, I would suggest to you that it would be a very important step in terms of your relationship with the labour movement that some recognition be given to the very important contribution it makes to skills development and whatever availability these courses have. I think all these things have to be looked at as bridges and we must not overlook any of them.

Ms Birkenmayer: If I could just make one further comment, we do, as the chairman suggested, regret the limbo, as you call it, at the policy level and the participation at the board level, but things are going on at an operational level. We are continuing to discuss projects, the electronics manufacturing association's joint human relations committee being one of the most well advanced, and there is still that joint participation in that group. We want very much to ensure that those bridges are kept open.

Mr Farnan: Good, thank you.

Mr Pelissero: You may have covered this in your opening remarks with SkillsLink database, and if you have, just let me know and I will go back and re-read Hansard. How does someone access that system? Who can access it currently, and the numbers that are accessing it, or is it just a prototype that is up and running? Who is using this great body of knowledge behind this thesaurus or whatever you call it?

Ms Birkenmayer: It is not yet launched. We are launching the product, we hope, in May. The intended clients are business and industry, all business and industry across the province, and there will be a number of ways in which a business could access it. If they are a medium-sized firm or a firm that does a lot of training, they could become, as on any on-line database, a subscriber. You pay an initial fee for hookup and then you pay your usage fee as you sign on and you use the service.

Also though, because we are concerned with small business access, we will have a one-time or one-off shot. If you want to call and have a search done, there will be a fee for a one-time search, so you do not have to be linked on. The third way of access is that we are expecting a lot of industry associations to be subscribers to the service and then provide that service to their members, so we are trying to get any number of ways in which any sized firm could easily access the database.

Mr Pelissero: How far down the road before you anticipate allowing high school students to access?

Ms Birkenmayer: We are looking at that. Our first mandate was workplace training. We want to get the system up and operating and see how it is working, but we realize that if we get all of the college and all of the university offerings on there, that would be the only on-line, up-to-date service where that would be available. There is not a computerized on-line service at the moment in government, so that might be an interesting spinoff, if our product were used in the secondary school system. But we want to get the first round up and running in the workplace, and then we will take a look at that.

Mr Lewis: But the word is not "allow."

Ms Birkenmayer: Oh, of course not. If anybody wants to subscribe—

Mr Lewis: The issue is not being allowed. Anyone would be able to have access who wished to.

Ms Birkenmayer: If they wished to subscribe, yes.

Mr Pelissero: Do you see it tying into such things as the Canada manpower centres, unemployment agencies, etc?

Ms Birkenmayer: It could very well. There is a lot of interest on the part of the federal government in acquiring access to the service.

Mr Pelissero: Okay, and what about the question of updating the information? Obviously with a large bank, as soon as you launch it, something is going to be out of date.

Ms Birkenmayer: We have systems in place for each of the types of data that are being collected as to the ongoing mechanism for keeping that information flowing. You are quite right, that is the biggest challenge. It is easier to drop stuff than it is to get it on.

One of the features of the system on the seminars and workshops that are date-related is the minute that date is passed, the system will automatically delete it.

Mr Pelissero: Is it stored someplace?

Ms Birkenmayer: Oh, yes.

Mr Pelissero: If it is going to be an annual conference or seminar, whether the hosting body notifies you or not, it automatically—it is an old bring-forward system.

Ms Birkenmayer: Yes, it would be that, but before putting it back up, we would have a system of checking with whoever was the sponsoring agent to ensure that it was on the dates or whatever.

Mr Pelissero: Within the system are there going to be just any spot checks to say, "We'll take that," and actually phone that telephone number or call that course to see whether it is, in fact, the one that is—

Ms Birkenmayer: It is being offered at that point?

Mr Pelissero: Yes.

Ms Birkenmayer: We are relying on hearing from our clients if there are fly-by-nights that are not in fact doing what they said they would be doing. At the moment, we have not put in that type of check. I just realized that, as we started to talk, when I was doing the demonstration I forgot a couple of things. We are going to have on the system the government services, financial and other services that are available to businesses related to training, both provincial and federal eventually, so that not only can they find out where training is available but what government programs might be applicable to assist them in that. That was one of the things all of our clients did indicate was of great interest.

The Chair: Could you provide for the committee the costs to date of setting up this SkillsLink database system?

Ms Birkenmayer: Yes, we would be pleased to do that.

The Chair: And the maintenance costs of it once they are up. How much more costs are you going to attract in bringing it to fruition?

Ms Birkenmayer: What the potential revenues are?

Mr Lewis: How much further additional cost still to be incurred in bringing it up.

The Chair: Yes. When is the kickoff date? March or May?

Ms Birkenmayer: We hope it is May.

The Chair: I would like to know what the capital costs are and what the maintenance costs are going to be.

Ms Birkenmayer: Sure.

The Chair: Do you anticipate its paying for itself?

Ms Birkenmayer: We hope to. It was set up for a public policy reason. It was deemed by the Muncaster group that there was a need for this database from a public policy perspective.

But we are trying to model it in the best and most efficient, in a sense, commercially based operation that we can, considering what the public policy objectives are as well. I would hope that within a few years we are going to be covering our operational costs. There is so much uncertainty, I would hate to commit.

The Chair: You are not going to pay for the capital costs? You said "operational."

Mr Lewis: No, maintenance costs.

Ms Birkenmayer: The capital costs have already been incurred. The capital costs of the hardware and the initial software were in fact paid for by the grant we received. We paid for it out of operational grants.

The Chair: No. I mean we the taxpayers.

Ms Birkenmayer: Yes, of course.

The Chair: I want to know whether the taxpayers are going to get their money back, and you are saying no.

Ms Birkenmayer: In terms of the full developmental costs, I would say not within the first five years, but I would be in a better position about a year from now to give you a better sense of whether or not that will be possible.

Mr Pelissero: Just on the point, the fact that it is one-stop shopping, to me, whether it is a company or an employee, the ability to go to one agency and ask a number of questions through a number of menus, is invaluable. I know the amount of information that we process at our constituency offices in terms of requests for information where people say: "I'd like to enter a retraining program. Who do I talk to?" I normally now end up sending them to three or four different agencies because there is not a pool of information. From what you are telling me, this is, when it is going to be launched, the most

comprehensive database on training in the province.

Ms Birkenmayer: It is.

Mr Pelissero: Again, depending on how you package it, if I have a person who wants to upgrade his training, he would be able to go to that database and say: "This is where I should go. This is all the information." I think we should have computers in all the MPPs' offices. I say that seriously, because we get a lot of people who come in, whether they are small businesses that want to train their employees or they are employees of small businesses who just simply want to upgrade their own skills. But there has to be some way to tap into this thing without its costing a lot and without setting up a lot of bureaucracy. I appreciate that you want to keep that down to a minimum, but the capital costs, whether they are paid for over 10, 15, 20 years, are as much an investment in people as they are trying to actually recover the costs of the system.

To me, that is an invaluable tool. To one-stop shop on a computer database is something that you are to be commended for putting together.

Ms Birkenmayer: I appreciate your comment. The most difficult area we are having in compiling that database is government services.

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Mr Pelissero: From what angle?

Ms Birkenmayer: From understanding the breadth of them—they are continually changing—and also trying to figure out how best to structure it from the end user's perspective, because, as you well know, governments have everything in a program. Everything is a program title. The program titles per se do not necessarily immediately say anything to somebody who is in small business. As you say, they want to know, if they have somebody they want to upgrade or something or other. We are really having a challenge trying to get our minds around the array of government services that are available.

Mr Pelissero: I would not let that stop you from launching it, by any means, because you may never solve that problem. It is like Mission Impossible. But other things, such as libraries, whether you use Canada Manpower centres or whatever, you make it as end-user-friendly as possible and go from there. It is like when I plug my card into the automatic bank teller and push some numbers, it tells me, "Okay, what's your next selection," and it tells you, "You have no money," so that solves the problem real easy, but that kind of approach to making it as user-friendly as possible.

The Chair: With regard to the charges, can you tell me how you are going to set your rate of charges for the service? Are you going to try to recapture any of the capital costs or are you going to charge on the basis of maintaining the system?

Ms Birkenmayer: We have set our pricing structure on the basis of what the market will bear. We have done market research and comparative research that indicates what people pay for databases and what they are prepared to pay for similar services of this nature. We are very cognizant of our public policy objective of access.

The Chair: You can sell any program or system if it is cheap enough. Governments are famous for handing out cheques and saying that is a successful program. With your charging policy, are you going to recapture the cost of running the system and paying for the capital cost?

Mr Lewis: Let me jump in. In terms of what our objectives were in terms of when we put our business plan together from the outset, our objective with respect to SkillsLink was that we would design a product, a service, that was sufficiently attractive that we would be able to generate enough annual revenues to keep up the maintenance and the enhancements of that, and we were giving ourselves a three-year time frame to get to that point. It was never our intention that we would treat this as a pure investment, that we were going to get a return on investment of 18 per cent on the capital cost, but it was our objective to make sure that in terms of the annual revenues that we could generate from the use of the system, we would be able to keep it at the leading edge and keep it fully in hand. So we never even set rate of return targets or objectives for this part of our business.

Mr Tatham: You have pretty well answered my question, except I want to say that we are talking about literacy, are we not: literacy, illiteracy, the ability to make money, to live and to get on with life? If you live in India, so much literacy is so much money, and if we improve ourselves, we do it. But the question I was going to ask, which you answered, was, have you set a goal as to what kind of return you would expect on the amount of money we invest?

Mr Lewis: We have not set a monetary goal in terms of setting a rate of return. In terms of SkillsLink, we would like to think that we have designed a product that will perpetuate itself in terms of that there would be sufficient demand for it, but our real return that we are looking to is

to try to help improve the infrastructure in this province to keep us competitive by improving the training that is available to the workplace.

Mr Tatham: You have got to do that, but you should still have a one per cent, two per cent, three per cent return on the investment.

Mr Lewis: We do not talk that way. We talk that we do not waste money. We talk in terms that if we are developing a training product or a training technology, there will be sufficient demand for it, that the revenues generated will cover the costs of having to put it together. If we were successful in doing that, then we would say that was a worthwhile project. If we spend money and develop a product or a service that no one wishes to use, then obviously we were misguided or misdirected in terms of our perception of what was needed. That is why we say we would like to see our decisions meet the test of the marketplace, but we are talking in terms of recovering our costs or there is sufficient usage, as opposed to saying we are getting 18 per cent return on equity. We are not thinking along those lines.

Mr Polsinelli: Mr Lewis and Ms Birkenmayer, I would like to add my voice to the chorus of praise you have been getting from the committee members in terms of the database you are establishing. It is something that perhaps has long been overdue in this province, and I am sure it is something that is going to be very successful. One of the other reasons I would like to praise it is quite simply that I can understand what you are doing there.

I am having some problems, though, understanding the training materials fund and the training technology fund. In looking through your press releases and the information that has been given to us, you will be working in partnership with "private sector training developers"—I emphasize those words because I do not understand them—"to develop much-needed training products and technologies"—and I emphasize those words again because I do not understand those words either. They are obviously trade jargon, that is, jargon within the training culture, and I would appreciate it if perhaps you could spend a few minutes translating them into legalese that I could understand.

Mr Tatham: Don't do that.

Mr Lewis: Let's focus on some of the key words there. One of the key terms there is "private sector." The reason why we see ourselves working primarily with private sector trainers is that the flipside of that is public sector

training, which means the universities and colleges, and there is already a mechanism in place to fund training initiatives and training activities through the colleges and universities funding process. There is not really a role for us, as Ontario Training Corp, to be funding or stimulating a community college to develop a specific course, because there are other sources of funding and mechanism available to that community college.

We see a role where someone could come along to us and say, "There is a need for this type of training and here is a program," and the best person to deliver that would be a community college. So we would see community colleges and universities being very much part of the delivery mechanism of needed training or training that has been developed by the private sector or by a joint activity of the private sector and a community college, perhaps partially funded by us.

Mr Polsinelli: Before you go on, when you talk about private sector trainers, are private sector trainers sort of like management consultants? Are they entities in themselves or are they subsidiaries of, say, General Motors or Ford or perhaps a large corporation that would have a training component, or are they just a group of people who say, "We are private sector trainers and we can train you to do anything and we'll develop a training program to meet the needs." It is just an industry that I am not familiar with that they exist.

Mr Lewis: I would say in the sense we have used that and you are quoting that phrase, we are talking about third-party private sector, as opposed to the training department of General Motors or the training department of the Ford Motor Co. We are not dealing directly with companies.

Mr Polsinelli: So you are dealing with private sector trainers, which is a separate entity, whose sole reason to exist, whose sole business activity, is developing training programs, and each one of them, I take it, would have a separate expertise? Is that correct?

Ms Birkenmayer: That is correct.

Mr Lewis: Yes.

Mr Polsinelli: I think earlier in your presentation you indicated that they ranged anywhere from one to two individuals to 30 people. How many of these business entities would you say exist in the province?

Ms Birkenmayer: I believe we have identified perhaps 250 in that range.

Mr MacBean: I think it would be a lot more than that if you include the technology side. You are talking over 1,000.

Ms Birkenmayer: The ones that are involved in the more traditional forms of developing training, about 250. If you branch out into the technology firms, where you are getting into software and where because they are in software development they are starting to look at some training applications, that list is a lot bigger.

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Mr Polsinelli: In your history so far, I believe you have reached five agreements with private sector trainers.

Ms Birkenmayer: That is correct.

Mr Polsinelli: And you have disbursed or will be disbursing \$2.1 million. Simple mathematics tells me that you are disbursing an average of \$425,000 per agreement. What is the contribution in terms of the proposal from the private sector side? You are putting in money and your expertise. What are they putting in?

Ms Birkenmayer: They put in usually about the same amount. We will never finance 100 per cent of a deal, and it usually is in the area of 50 per cent. We seldom put in more than 50 per cent. We may go a little bit above that, but not usually.

Mr Polsinelli: So the projects would be jointly funded?

Ms Birkenmayer: Absolutely.

Mr Polsinelli: And your maximum contribution would be 50 per cent?

Ms Birkenmayer: We do not have that as a hard and fast rule, because sometimes, depending on the nature of the project, we may accept some previous development as part of their input. But, roughly speaking, we want them to be at risk in every sense of the word, as well as ourselves.

Mr Polsinelli: I think that is a good attitude to have. I would also suspect that the private sector would develop some type of payback forecasts in terms of each one of these proposals. Can you perhaps pinpoint any one and tell us what their projections are in terms of recuperating their investment on their proposal, and I guess, collaterally, it would be recuperating—

Ms Birkenmayer: They range so considerably in each one.

Mr Polsinelli: Just pick any one out of the pile.

Ms Birkenmayer: We may get anywhere up to, say, 12 to 16 per cent of net sales over a five-year period. We could, theoretically, in an ideal situation, perhaps get a 25 per cent return.

But we could get a lot less as well, because if the product does not do well, we do not get anything.

Mr Polsinelli: I understand that, but what I am saying is, you are funding 50 per cent of a training proposal. You would reach an agreement with the private sector that the revenues from that proposal would be shared. I would assume that there would be some type of joint sharing of the revenue.

Ms Birkenmayer: We usually get a royalty payment.

Mr Polsinelli: The private sector, as does government, when it enters into any new initiative, would have a business plan, would have a forecast as to how long it would take to recover its proposal. All I am suggesting is, if you could provide us information on any one of these five that includes that type of a business plan and that type of a forecast as to the amount of time it would take to—

Mr Lewis: What we probably should do is give you one of the business plans and one of the proposals. In each and every case, there is a marketing plan and a budget forecast, and there are all sorts of assumptions built into those, obviously.

Ms Birkenmayer: We would be delighted to provide you with that.

Mr Polsinelli: I think I would need something like that to help me see more clearly, not necessarily the type of proposal, but in terms of your investment scenario, you know, the viability of becoming self-sufficient by 1992, 1993, 1994, 1995 or whatever time this decade, and I think perhaps just understanding the whole training culture—

Mr Lewis: Excuse me. When I used the words "self-sufficient" earlier, I was talking about being self-sufficient with respect to the management of the SkillsLink part of our business, as distinct from being self-sufficient in terms of the investment side, because to be perfectly honest, we do not know at this point in time, looking at 1995, just how much money we could be investing in joint ventures productively.

As I mentioned in our opening comments, we are in a startup situation. We have only been looking at projects for one year. If we had had this meeting six months ago, you would have been asking the question of us, "Where are the projects?" Six months ago we had not agreed to any investments, yet we have been in business for six months.

So what our views will be in 1992, I am uncertain. I know we will have a much better

conviction of what is required and what can be accomplished in following the route we have been going, and indeed, we may have some suggestions as to how we could better fulfil our mandate in 1992.

Mr Polsinelli: I think all members of the committee appreciate and understand that a year and a half in the life of any corporation is a very brief period of time, particularly in a public corporation that has certain public objectives to fulfil and is not just profit-oriented. So that type of explanation, I think, is taken for granted by at least this side of the committee, and I think also the other side of the committee.

I would ask, in terms of once a proposal has been accepted, what type of a monitoring mechanism do you have to ensure that the training proposal is being developed? How do you monitor its development along the way.

Ms Birkenmayer: Closely, I can assure you. We have a very tight mechanism for ensuring that certain events occur when they are supposed to occur. Sometimes in the development stage, for example, we are only flowing money out at certain stages, as certain milestones are hit. We seldom ever give all of the money with respect to a proposal out first. So during the developmental stage there are certain milestones that have to be hit, money is flowed, and then we are monitoring, of course, the distribution and sales from that point on, and there is set in all of the agreements their quarterly reporting, when the revenues are due to us in each quarter. They flow into us on a quarterly basis. It is very, very tightly monitored and very clearly spelled out.

Mr Polsinelli: I am glad to hear that.

Mr Lewis: I would like to add one comment, though. That is an overall observation, but there is not a specific mould that a project has to fit into. We deliberately are making each one tailor-made. We want to make sure that we are approaching the situation in a flexible as opposed to a rigid manner, so although the principles are there, the mechanisms that we use, I hope, we are designing separately for each and each different situation.

Mr Polsinelli: Two more very brief questions. One is, in terms of the proposals that you examine, does your corporation have an overall strategy in terms of the types of proposal that you are looking for; that is, you are perhaps looking for something in the microcomputer technology field? Would you be looking also for something in the tool and die, machine shop area? Do you have an overall objective as to the type of training

programs that you want to have developed, or is it what comes in, we will choose what we like?

Ms Birkenmayer: We are working on both. We are getting proposals, we are getting ideas from both sides, as I mentioned earlier. Those people who develop things—you know, what we call the training developers—are coming to us, without a lot of prompting, with concepts and proposals. At the same time, though, we are trying to get a better handle on what are the real training needs out there by various industries. That is a slower process to get a handle on.

So at the moment, we are getting more on sort of the supply side that are coming to us and then we are going out and seeing where the need really exists. As we get to know the various industry sectors better, and the needs of users out there, more and more we are going to be able to take that information and let the industry know what we are looking for in terms of proposals. But at the moment, we have not said, "We're only interested in A, B, C and D." We are letting them flow, because a lot of these people do know the marketplace well. I mean, we are checking it out. But as we get our intelligence more, we will be able to give direction.

Mr Polsinelli: Then you are trying to develop an overall plan in terms of the training proposals that Ontario requires.

Ms Birkenmayer: Yes.

Mr Polsinelli: All right. We touched a little bit earlier on community colleges, and I guess everybody is aware these days that both community colleges and universities are putting a greater emphasis on private sector participation with both the colleges and the universities. These types of programs, while I would not be able to pinpoint any particular company and college, I am sure are presently happening with the community colleges and private sector. But how would you see your relationship with the private sector, as the Ontario Training Corp, being different than the community colleges' relationship with the private sector training developers?

Ms Birkenmayer: The community colleges are primarily serving their area, the area that they have been set up to serve, and they work very much on a firm-specific basis. They work very much with individual clients to help develop things to meet the needs of that particular firm.

We are trying to work on a broader base, on training that can be more broadly applied, not just to one or two firms but across both sectors. So our perspectives are a bit different. However, the colleges do come up with some very good

concepts for training that are needed on a much broader basis. When that happens and they come to us, as Mr Lewis said, we are not in the direct role of financing community colleges. But what we do is say, "Look, you have a really good training proposal here, but it needs much more distribution, broader business orientation to its applicability beyond the community that you serve."

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We try to get them involved with a private sector distributor who would then take that particular product, while it has been developed perhaps for one or two companies, and make it into something broader and distribute it on a broader basis so that we get that kind of leverage and usage out of it. We are encouraging colleges to work with the private sector on that basis.

The Chair: I have a few questions. Will you be able to cover, with your revenues, your operational costs by 1993?

Ms Birkenmayer: I am not trying to hedge here, but it depends on how you define the operational cost. If that is everything other than those funds that we invest in our direct investments, we are hoping that we would be able to do that within a four- to five-year period. We would like to be able to aim for that, but we still have the public policy objectives to meet and it is a little uncertain at the moment.

The Chair: So on your memorandum of understanding with the Ministry of Skills Development, you are telling us there are questions whether you can meet your commitment at this time?

Ms Birkenmayer: That is correct.

The Chair: Are you attempting to alter the memorandum of agreement?

Ms Birkenmayer: No, we are not. I think both parties are quite satisfied with the memorandum as it currently stands. One of the issues relating to that particular clause in the memorandum was that it was based on the initial financing or the initial outlook of what the expenditures or the corporation would in fact be. It was deemed that \$6.8 million was what they thought the corporation could operate on, including the investment funds. Those were, I think, in 1986-87 dollars.

The actual cost of running and developing the corporation is higher than that, but we are not looking to increase that grant other than perhaps by an inflationary amount, but we were looking immediately to try to close that gap between the differences in what those costs were and the

reality by the generation of our own revenue. The objective of covering the operational cost is, in fact, a much more ambitious objective than what was conceived in the original memorandum.

The Chair: The original agreement was that you were to get \$6.8 million total to set it up, and that would be the contribution of the government?

Ms Birkenmayer: It was \$6.8 million per year.

The Chair: Per year. To date, you have spent about \$5 million, to the end of December 1989. You have indicated today you have spent another \$2.1 million in investments which, I presume, have been in the first two months of this year. Is that correct?

Ms Birkenmayer: The investments are committed. There is a difference in timing. We make the commitment to an investment, but it may flow over about a six- or eight-month period and certainly flows from one fiscal year into the next.

The Chair: How much will you spend by 31 March 1990, which I assume is the year-end you are working with?

Ms Birkenmayer: Our operational budget will have been completely spent. We went into this year with a \$6.8-million grant plus a carry-forward from last year which was a continuation of startup. I think our budget in total was \$7.1 million this year.

We will have fully spent or committed that entire amount. The actual flow of money from some of the investment funds will not have flowed but they will have been committed.

The Chair: So you are going to keep that money in the bank. Is that what you are telling me?

Ms Birkenmayer: To match the legal commitments which we have.

The Chair: You will have had, until the end of the year, in your control or turned over to you from the government, \$7.1 million plus how much from the previous year?

Ms Birkenmayer: In total, the grant from the first year was \$4 million and the grant this year is \$6.8 million so that makes \$10.8 million to date from the very beginning to the end of the current fiscal year.

The Chair: In terms of revenue, other than the government, have you produced any revenue at all or will you produce any revenue by 31 March 1990?

Ms Birkenmayer: There will be interest revenue and accrued investment income of about

\$50,000 on one of our first investments. That revenue is starting to accrue now.

The Chair: The only revenue you will be receiving from an investment, other than putting money in the bank and gaining interest, is \$50,000.

Ms Birkenmayer: In this present year.

The Chair: On over \$10 million in investment, that is what you have to date.

Ms Birkenmayer: Yes.

The Chair: There were three areas of business. We talked about the investments and you have indicated that of the \$10.8 million, \$2.1 million is earmarked for investment with these five projects. Is that correct?

Ms Birkenmayer: The \$2.1 million covers the projects that have been approved to date. This year, \$2.7 million of our total amount of money goes to investment. We will be committing the further \$600,000 in the next couple of weeks.

Mr Lewis: Of the \$10.8 million, the figure is \$2.7 that would be investment funds.

The Chair: The \$8 million has been spent on setting the corporation up and on investing in the SkillsLink database project?

Mr Lewis: And managing the investment process and managing the professional development process; the three activities.

The Chair: In terms of the five projects—I guess there are more than five; five make up \$2.1 million but there is \$2.7 million, there is another \$600,000—what is your expected rate of return on those investments?

Mr Lewis: As I mentioned earlier, we do not think in terms of rate of return because it is almost that the word "investment" is an unfortunate word. These are joint development projects. Our objective is to satisfy ourselves that there is a reasonable opportunity that we will get our moneys back and that there will be a continuing involvement on a royalty basis or a revenue basis as distinct from looking at it from a point of view of rate of return.

The Chair: You would be satisfied if you got \$2.7 million back out of these investments.

Mr Lewis: We would expect to get \$2.7 million back. If we did not get \$2.7 million back, then we would say that we misjudged either the cost of putting the training proposal together, or proposals together, collectively, or we misjudged the marketplace. In addition to the \$2.7 million, we hope that some of these training projects or products are very successful, in which case there might be lots more revenue and that

would be great from our point of view. It would show that we have participated in the development of a very worthwhile training product, or a training service, or a training technology and that was being reflected in a demand for that service. But we do not set a target of 15 per cent or 14 per cent return on investment because that is not the business we are in.

The Chair: I am trying to determine what business you really are in and that is, I guess, the reason for my questions. In some ways, I think the government has led us to believe that this is going to be a self-sustaining corporation and that is not what I am getting back from you in your answers this afternoon; or at least that is the way some of the answers can be interpreted.

You are telling me that it is a public policy corporation as opposed to one that is going to break even at some point in time in the future.

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Mr Lewis: I guess I could answer that question partially by saying I could envisage a model, looking down the future, where the returns and so on that we are getting from the various activities we are involved in, whether it is SkillsLink or the investment returns, could pay for the overheads. We would like to think that the revenues that are going to be generated are going to be reinvested in new development projects, so we would see an appropriate role ongoing for a level of funding to this corporation. I think, if you wished, you could look at it from the point of view of saying that we are continuing to invest in the development of new training products and new training services.

The Chair: Is the business community supportive of the Ontario Training Corp?

Mr Lewis: The answer is yes, that the business community is very supportive or very cognizant of the need for training, and to stimulate training at the senior levels of business. Where the decisions are being taken at the smaller or medium-sized businesses it is our sense, and I think the statistics support this, that training is sort of in the nice category as opposed to the necessary category. I want to make a distinction between lip service that training is good and a perception that training is a very necessary, needed expense and should be part of the business equation in terms of how you manage a successful enterprise. That is going to take time. We are talking attitudes and we are talking a whole host of factors not all within the purview, by any means, of Ontario Training Corp, but I am confident that there is that support

for the things we are trying to accomplish within the business community.

The Chair: If that is the case, was there any attempt by the corporation to go away from government financing and seek private financing from some large corporations who could obviously see the advantages in perhaps the SkillsLink system or some of the other things? Was there any attempt by you to go outside government or were there any offers made by larger businesses to support your endeavours in dollars?

Mr Lewis: I can say that, since I have been involved, the answer to that question is a clear no. There has been no attempt by us to solicit investment from the corporate community—investment in dollar sense. We obviously seek the support.

I think the Muncaster committee looked at the whole issue very carefully at the time that it was doing its report. It really came to the conclusion that, in terms of the training culture here in Ontario, we have some examples of many companies that are certainly committed to training and the importance of training. You can look at the firms like Xerox, IBM, the trust companies, the banks, the insurance companies, the oil companies; all sorts that have a continuing commitment and major expenditures in the whole area of training.

The problem was perceived at the next level down in terms of the size of companies where it was easier to recruit and hire to meet your training needs as opposed to looked after in-house. That was sort of the prevailing wisdom. That is why I think the Muncaster report came to the conclusion that what we have to do is not expect all those companies to start building those sorts of in-house training capabilities that the larger companies have, but you have to put in place a training infrastructure that they can tap into easily.

That is why we see as our role putting together the information. We see ourselves trying to facilitate the development of training products through the investment activities and we try to stimulate the whole level of the training delivery system with our professional development programs.

But the attitudes towards training as a necessary part of my business, we cannot do. We can talk about it, but it is going to be something that has to become part of the lore of how you effectively run a business. I think all of us who are keen on training, and believe in it, are going to have to do that. You cannot look to the Ontario Training Corp and 45 people to change the

attitudes of the many hundreds of thousands of employers in this province alone. It is going to need input from us all.

The Chair: The third sector of business that we did not talk too much about; I would like to know how the corporation is going to gain revenue from the professional development end. We sort of glossed over that in the presentation. What are your plans to generate revenue from that side?

Ms Birkenmayer: That is the one business where our revenue expectations are less than they are in the other ones. It is more of a public policy program. However, we do intend to offer a number of services minimally that will be on a cost-recovery basis. Some of those include particular seminars for trainers themselves.

One of the weaknesses that we found when we were trying to look at skill deficiencies, or whatever, in the training community was their ability to in fact design training plans that met with the overall corporate business plan; that trainers were really not integrating themselves into the business objectives and the strategic planning of the corporations. So one of the training products being designed for the training community itself is a training workshop on this particular subject. It will, in fact, recover its costs in the first year and from that point onwards would hopefully generate some net revenues.

There are a number of projects that are being undertaken in professional development that are short courses and seminars. There may in fact be some training product which would stand alone even for the upgrading of trainers, all of which will be offered on a fee basis. But the potential for high return there is not as great as we hope we might be able to get in some of the others. If we got a complete cost recovery on that one, we would be quite satisfied.

Could I go back for a second, Mr Chairman, to your previous comment on the whole financial outlook of the corporation?

The Chair: Sure.

Ms Birkenmayer: We in fact are attempting to balance all of the time our public policy objectives and our commercial objectives. And the way in which we have operationalized that for the present is that within three years we would be covering our operational costs, not the investment. That, in fact, would be over and above that. One's strategic plans and whatever always have to be upgraded as one gets better knowledge. Our conservative or reasonably optimistic forecasts do indicate that we will be generating between \$3 million and \$4 million in revenues

within the next three years, in the third year out. So if that is the expectation, then we will be very close to, if not at, the recovery point of our operational cost.

We do not want to be going back for increased dependence. At this stage, philosophically, we do not want an increased dependence on our grant. We do want to generate revenues which can be used to plow them back into the business.

The Chair: There are three areas of business. Can you indicate to us what the approximate breakout in terms of costs to the corporation will be for running those three businesses?

Ms Birkenmayer: We have got the costs and the projected revenues over that period of time. We fully allocate, by the way, all of the costs of the corporation to one of the three businesses. So we are trying to be cognizant at all times, not just of our direct costs but of our indirects and our overheads.

The Chair: Perhaps you would provide us with that sheet after you are finished.

Ms Birkenmayer: I would be pleased to do that. We will provide it to you. This indicates that in the first nine months the training database was costing us \$1.4 million, the investment funds operation to date was about \$880,000 and professional development \$100,000. That is the relative breakout.

The Chair: Sorry. What do they all add up to?

Ms Birkenmayer: That added up to \$2.4 million that we had spent by the end of December of this year.

The Chair: And by the end of March you are going to have \$10.8 million spent.

Mr Lewis: That was the previous year as well.

Mrs Kerr: That was year to date.

Ms Birkenmayer: That does not include the actual investment funds.

The Chair: That is \$2.7 million.

Ms Birkenmayer: Yes.

Mrs Kerr: All cash. So these are operating expenses. That does not include the capital investment.

Ms Birkenmayer: We will give you a fully allocated breakout for each of the businesses.

The Chair: Okay. I would appreciate that very much. What do you project for your deficit for 1990-91, next year?

Ms Birkenmayer: We are not planning to operate in a deficit. We are in the midst of striking our budget at the moment.

The Chair: Let me define deficit as not counting revenue dollars from the government of Ontario.

Ms Birkenmayer: In our revenue projection for next year, outside of the government, the most conservative range was \$440,000 and I believe the upper range was \$600,000.

Mr Lewis: I do not think that is answering the chairman's question.

The Chair: In effect it is. Really they are saying that they are going to operate with a deficit of \$6 million.

Ms Birkenmayer: If our operating budget is in fact \$6.8 million and we are generating \$440,000, that is correct.

The Chair: It is in the neighbourhood of \$6 million.

Ms Birkenmayer: That is correct.

Mr Polsinelli: Not necessarily, because a portion of that would be considered assets of the corporation.

Ms Birkenmayer: They are assets, yes.

The Chair: That is true. I give you that, yes. It depends on how much of the \$6 million goes towards "investments" in terms of these—

Mr Lewis: A lot of the expenses that we have incurred in the first year and a half, if we want to use business jargon, are what you would call one-time start-up expenses. There have been a lot of start-up expenses and capital-type expenses with respect to the development of SkillsLink in terms of the hardware, the software. Those would be one type of expenditures as distinct from annual operating expenditures.

The Chair: I realize that at the beginning of any business endeavour, that is always an added expense starting it up.

I do not have any other questions. Do any other members of the committee? Okay. I do not think we will require your presence tomorrow. Thank you very much for coming.

Mr Polsinelli: Perhaps you could supply us with information within the next day or so.

The Chair: Yes. We would appreciate receiving that information.

Ms Birkenmayer: We will have it for you as promptly as possible. I think it is all there.

The Chair: We will be meeting tomorrow at 11 in a closed session.

The committee adjourned, at 1702.

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Legislative Assembly of Ontario

Second Session, 34th Parliament

Assemblée législative de l'Ontario

Deuxième session, 34^e législature

Official Report of Debates (Hansard)

Wednesday 7 March 1990

Journal des débats (Hansard)

Le mercredi 7 mars 1990

Standing Committee on Government Agencies

Agency Review

Comité permanent des organismes gouvernementaux

Étude des organismes
gouvernementaux

Apprenticeship and Tradesmen's Advisory Committees

Comités provinciaux consultatifs
portant sur l'apprentissage
et les commerçants

Chair: Norman W. Sterling
Clerk: Harold Brown

Président : Norman W. Sterling
Greffier : Harold Brown

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday 7 March 1990

The committee met at 1111 in room 228.

AGENCY REVIEW

APPRENTICESHIP AND TRADESMEN'S PROVINCIAL ADVISORY COMMITTEES

The Chair: I see a quorum. I am Norman Sterling, the chairman of the standing committee on government agencies. This morning we have the apprenticeship and tradesmen's provincial advisory committees. I believe we have Mr Landry, Mr Fell and Ms Cameron. Mr Landry, I presume you are carrying it. We would normally ask the group to make a presentation and then engage in a question period by members of the committee.

Mr Landry: I am the branch director for the apprenticeship branch of the Ministry of Skills Development. I will describe in a few minutes the provincial advisory committees and get right into questions. It is a fairly small agency so I did not come with a major presentation. I trust that will be satisfactory.

Under the Apprenticeship and Tradesmen's Qualification Act, the minister has authority to appoint members to trade-specific committees to advise him on all matters having to do with apprenticeship. These matters include: standards by which training is done for the trades, and the trades are as you would think they are—electricians, plumbers and a whole list of them; criteria for adjustments to trades—for what kind of people we might be adjusting our programs to attract into trades; new trades—with the changing environment, obviously trades have to evolve and sometimes we end up with new trades; trends in the marketplace; technology and so on; duration of apprenticeship; ratios of apprentices to journeymen on the job site, and so on.

These committees, as I said, are appointed by the minister and are purely advisory. They do not have any real decision-making authority other than we try to listen to them as best we can. Their composition is usually about 10 to 12 members; half of them are employers, half are employees.

The most significant thing that has happened to the PACs in the last while is a sunset review we did for Management Board in which we identified a number of weaknesses in the PACs and we committed to reforming them, if you will. Some examples of that are that they had no real operating protocols and they had no orientation package. So we would ask members to join and they were a little bit left on their own to figure out what the rules of the game were and even to get copies of the act and so on.

We wanted to strengthen the reporting relationship from the PACs to the minister. It goes through me, but there was not a formal reporting relationship, nor from the minister to the PACs. Now we have decided that, for example, at least once yearly the minister should put out a missive to the PACs to say what advice he would like: what areas of concerns he would have that he would seek their guidance on.

We also wanted to broaden the advice. Since we have these people committed to the trades at the table, we felt we should ask them beyond simply very technical things having to do with

the regulations to more general things: What is happening in the marketplace? How do you see the future? How do we get more access for target groups into trades, specifically women?

We also wanted to ensure some regular meetings. We want to make sure that once we have established a PAC and the industry is demanding that we in fact meet, we send some rules around that: minimum meetings and annual reports and so on. All that is in process. We have a number of PACs being revitalized now.

In conclusion, I think there are fairly inexpensive ways for us to gather advice from a broad section of the community. I should mention also that one of the things we wanted to do was increase the representation of PACs to really reflect the province. I think we have been guilty a little bit in the past of being a little bit Toronto-oriented, a little bit large-union oriented and large-contract oriented. We are now seeking out nonunion employees. We are seeking out northern employers, big employers, small employers and making sure that all the industries or as many as we can that use these particular tradespeople will have a voice at the table. That has been a real challenge. It is not easy to ask someone who is running his small business in the north to give up a day or two to come down and advise us in Toronto, but that is what we are trying to do, with gradual effectiveness.

That is really all I have to say. I will be glad to answer questions as they are asked.

The Chair: Okay. Did any other members of your delegation want to add anything?

Mr Landry: No.

Mr Pelissero: Just to start on a point that you finished on in terms of not being willing to come to Toronto, has there been any thought on rotating the meetings around the province and, if so, has it been done?

Mr Landry: We have thought about it. I do not know, George, if it has been done before.

Mr Fell: Yes. We have tried it on several occasions and found out that the attendance was in fact a lot lower when we rotated it to the various areas. It was harder for the people to get to the meetings. As much as possible we tried to hold the meetings so that a person who is coming into Toronto can come in and be at the meeting and get back within one working day, and that is not possible always when he has to, say, fly in from Ottawa to Toronto and then from Toronto to somewhere else.

Mr Pelissero: We are informed this morning that the committees are under review—for lack of a better term—they were sunsetted and they are trying to be revitalized. Where is that process now?

Mr Landry: The revitalization process in terms of the background protocols and so on is complete now, and I think five committees are now ready to begin under the new protocols and broader representation.

Mr Pelissero: What about the other 34?

Mr Landry: There is a possibility for 39. We will have in the next six months about 13 more, simply because of how long it takes to get all the representation. People like George Fell are responsible to find these contacts in the province and get agreement to serve on these. I guess we underestimated how long that would really take to do.

Mr Pelissero: How do you seek out contacts? Whom do you contact?

Mr Landry: A number of ways. I have 27 offices in the province so I use my own district managers and industrial training consultants. We use our union contacts and industry associations. My program standards staff also, as part of their work, come in contact on a daily basis with a number of tradespeople. They are a source of nominations. Sometimes someone writes us a letter and expresses interesting ideas and a willingness to serve. Community industrial training committees also are a source. We try to use a fairly wide approach.

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Mr Breagh: I wanted to spend a minute or two on whether we actually need to continue to do it in this form. There are a number of other means of seeking advice that are operational now, centred in my area for example, around Durham College of Applied Arts and Technology: different trades councils, different trade union committees, different business committees. So there is a multitude of places where these things can be worked out and advice given.

The frustration seems to be that although there are a lot of touching points where people in the trades and people in the business can get together, in no place is there any real decision-making ability. They are all free to give advice to the government or to the community college, but the frustration seems to be that even though they meet regularly in a multitude of ways, they never get to make decisions. If my trades council, for example, meets with the people at Durham College and both sides agree, "This is what we ought to do," the first thing they find out is, "That's not your decision; that's made in some other ministry or some other department or some other place," and it may be two or three years before, it can happen, even if everybody in the world agrees with what those folks decided they wanted to do. Is there a better way to go about this?

Mr Landry: I understand your point and I agree that we have to find a better way of using the myriad of consultation that works out in the community. I am not aware of any that are really trade-specific province-wide. This is where we get into the problem. If we want to talk about standards to become a plumber, I do not know of another forum that would bring together union, nonunion, large, small and all that to talk specifically about that trade. I agree in terms of the decision-making. One of the points about our advisory committees is that they are not decision-making, but it affects regulations. So I do not know how they could be, but they are very influential. Do you want to add anything, George?

Mr Fell: In a lot of the trades that we are involved in they are interprovincial trades and, as much as possible, we try to keep the standards across Canada. It would be very difficult for committees that were located in one area or another, to be able to make that decision for the whole of the province. For instance, in your area in Durham, because it is a highly industrial area, the plumbers, for instance, may decide that they have to spend a considerable portion of their apprenticeship strictly on industrial uses. This would cut out, for instance in drainage,

almost all the people from the north, where there are no central drainage systems. So to try and maintain a provincial standard, the provincial advisory committee, which we try to get representative of the whole province, seems to be the one that works the best, in spite of the fact—I agree with what you say—that there are a number of different groups. A lot of the different groups, also, are answering to different things. For instance, the college advisory committees are really responsible for the college portion of the program.

Mr Breagh: What is perplexing me a little bit is, why are we doing this? We know who works in a given trade; we know where they are; we know which of the community colleges is likely to respond to a program; we know which of the industries require or want to participate in an apprenticeship program; we have provided a number of occasions when they can meet and discuss what their needs are and what is appropriate. We have, certainly, a lot of staff people around, in various colleges, in various ministries, who are pretty good at setting standards and regulations and will actually do that work eventually anyway. What is the purpose of this exercise? Are we seriously saying that we need to bring somebody in from North Bay to meet with somebody from Oshawa to meet with somebody from Stratford and we need to bring both sides of the bargaining table in and we need to bring in the community college people and ministry people and they will meet once or twice a year and they are actually going to have much of an impact? You see, I am just not sure that the technique we are using here is very practical. That is my problem with it.

Mr Landry: In terms of the forum and its usefulness, we get a lot of demand when we are not meeting. The industry gets pretty hot on us when we are not having regular meetings and are pretty vocal about it, because it views the forum as the one place where it can really discuss a fairly technical issue, maybe, with the provincial government in some formal setting.

To give you an example of why we like the forum, if you look at the question of ratios of apprentices to journeymen you have, in the electrical trade, two very distinct views on that. Usually, the large contractors' union, the International Brotherhood of Electrical Workers, would want to maintain the status quo. The smaller nonunionized contractors, usually from rural areas, are saying, "Look, we can't survive under this current way of doing it." So we have these two camps. It gives us a forum that the industry understands and the employees understand as well where we can hash these things out and come out perhaps with a compromise. For us it is a very useful forum and there is a high expectation, particularly in certain construction trades around, that the forums exist. When we delay meetings, we hear about it very strongly.

Mr Breagh: I do not deny that for a moment. That is what I would consider to be the valid part of this exercise. I am still not convinced that we need to set up an advisory committee that may serve a useful purpose once every three years. Why do we not just strike an ad hoc committee to do that? Why would we not do it that way? Why would we not develop a panel of people who would be interested in serving on that?

Part of what bothers me a little bit is what you said initially. I believe it is true that if somebody writes you a letter, he is not going to wind up on one of these committees. Just because he wrote you a letter does not necessarily mean he is eminently qualified to do that.

Mr Landry: I agree with you. It is a little more sophisticated than that in the sense that it would at least trigger in our

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minds who is expressing an interest. And we would check a broader range of people.

We will not have meetings, however, if there is nothing to meet about. Some of the trades will not meet for quite a while simply because there are no hot issues; the technology has been reasonably stable, for example. Or we will kill one. We killed the watchmakers' committee. There are very few people training in watch repair, even though it is a regulated trade and so on and so forth. If there is really no reason to meet, then we will move it aside and perhaps use our resources on a new trade or group that all of a sudden is advocating, saying to us, "We have a training need and we want a forum to discuss with government on that specific trade."

The Chair: According to the statistics we were provided, in 1988-89 there were only 23 meetings, total. You claim that there is a great need. The statistic does not match with the statement.

Mr Landry: It depends on the time for any particular trade. Some trades, because of the environment they are in, really feel a large and urgent need to meet with us in a formal setting. It varies. The other thing is that we did go through a revitalization process. We did almost start from scratch in terms of having meetings and setting the rules out.

One of the things we got criticized for, and I referred to it in my comments, was, "Only the big contractors are here." We can continue meeting with only the big contractors or we can say: "You're right. We should have broader representation. So let's clean it up." I think you will see more meetings, and at the demand of industry.

George has been a chairman of a provincial advisory committee for a while and I think he can talk about the reaction of industry in this semi-dormant period. It has been aggressive.

Mr Fell: You quote the figures from 1988-89. That is the period when we were going through this revitalization. We were out beating the bush to get members for many of the committees, to get the proper representation that Peter has talked about from all over the province of Ontario. So there were not as many meetings.

One case that comes to mind is on instrumentation. The instrumentation people from a number of industries approached government and wanted regulations and formalized training. That went on for two or three years and they met on a regular basis three or four times a year. I do not know what their reason is. If somebody is going to ask me what the reason is, I just do not know it. But suddenly they decided they did not need us any more and we could not get them to come to a meeting. We have not had a meeting with that PAC for some time. Again, that goes back about two or three years and now we are starting to have movement within that industry where they are contacting us and saying, "Hey, look, we're now ready to go ahead." So it is driven by the industry as much as by anything else.

Mr Morin-Strom: The figures show, again, as the chairman was saying, very few meetings and, frankly, very few government appointees made as well in 1988-89. You say you are revitalizing. Perhaps you could tell us what has happened this fiscal year to date: How many meetings there were during the 1989-90 fiscal year and how many appointments have been made.

1130

Mr Landry: We have five PACs active: motor vehicle mechanic, industrial woodworker and truck coach mechanic.

We have just got two through: refrigeration and air-conditioning mechanic and sheetmetal worker. We have electrical workers and plumbers before the minister now. That process was what I was talking about. We have our house in order in terms of the administrative support. Right now we are putting the membership through. I cannot give you a specific answer about how many times they have met this fiscal year, but it would be also fairly low.

Mr Morin-Strom: Are you saying that there are only five final, two of which have not been approved at this point? There are only three active committees to date?

Mr Landry: There are five.

Mr Morin-Strom: There are five and the other 34 have been inactive. No meetings this year.

Mr Fell: Several of them have had meetings, but it would be early in the fiscal year. The terms of the people on those committees came to an end, and then we were starting into the revitalization period. These people are appointed to these committees for terms of one, two or three years.

Mr Morin-Strom: How many people are currently appointed to the various committees? Do you have any data as to what the status is right now?

Mr Landry: The formal status would be the 10 to 12 times the five.

Mr Fell: That is right.

Mr Morin-Strom: Have any reports to the minister been received from any committee this year?

Mr Landry: There are minutes received from the ones that have been meeting, yes. The chairman forwards minutes to the ministry.

Mr Morin-Strom: They are supposed to be consultation committees. Does the minister get information in the form of minutes of what happened or does he get reports from the committees?

Mr Landry: That is one of the changes we are making now when we get the protocols. What happened was that the minutes came to me with my staff's comments, perhaps, but there was not a formal mechanism to give it to the minister. That is what we were not satisfied with and that is what the revitalization package did. It is to say, "Look, we need to relay a formal message to the minister." If the PAC, for example, makes a recommendation on changing a regulation, then we would do a draft regulation to show the ministry what the PAC has advised. There is that mechanism, but there has not historically been a formal way of saying, "Look, here's what we've talked about and here's what's important to us," to the minister. That is what we are trying to change, and vice versa.

Mr Morin-Strom: Would it be possible for the committee to get any examples of minutes or reports from a committee?

Mr Landry: Yes.

Mr Pelissero: How many draft regulations have come out of the PACs?

Mr Fell: One of the regulations started as a draft from a PAC. Once regulations are in effect, the major thing that happens to them after that is amendments to them. Right now there are two or three that I know of where the PACs have recommended changes and amendments to the regulations.

Mr Pelissero: That would have been within the last year.

Mr Fell: Yes.

Mr Pelissero: To get a handle to provide to the committee, any idea of how many changes to regulations have come via that route since the inception of the PACs?

Mr Landry: We could find out for you. We have a fair number of regulations put through: a few a year.

Mr Breaugh: I am not sure I heard you right. These are committees set up to advise the minister, but there has never been a way for the committee to communicate with the minister. It must be a hell of a hard road to advise him if you cannot communicate with him. Is that right? Is that what you said?

Mr Landry: There has not been a formal way, other than through the regulations and—

Mr Pelissero: And through you.

Mr Landry: And through me. I agree with you. That is why we wanted to change it. I agree.

Mr Breaugh: Help me out here. Is there now a way that the advisory committee on any of these trades can communicate with the minister?

Mr Landry: Yes.

Mr Breaugh: What is it?

Mr Landry: They would do it through me. And what we have done—

Mr Breaugh: Wait a minute. Explain that a little bit. If I am advising Harry Pelissero on how to do something, I do not consider that to be a direct route if I have to talk to Norm Sterling and Norm Sterling writes Harry a memo. I would not accept that as being a reasonable way to advise someone. What you are saying now is that they will send minutes to you. Your method of advising the minister is to draft a regulation.

Mr Landry: That is usually the recommendation that they make. It would be in the form of a change to a program through regulation. But with the new system that we have in place, it will be in fact formal, on paper, and direct from the chairman of the PAC to the minister. That is what we have changed.

Mr Breaugh: This is like a letter.

Mr Landry: It would be an annual report, something more formal.

Mr Breaugh: We are moving right along here.

Mr Morin-Strom: I would like to ask with regard to spending within the ministry staff. We had the figure of \$56,000 spent for the PACs themselves, but we also have indications that support staff for the PACs are supplied by the ministry. In 1988-89, 10 ministry officials were assigned to PACs. I would like to know if that is still the case today. Does that mean that each individual PAC is assigned to some staff person? I guess I would presume that these are just part-time duties. Would it be the case that this would be a ministry person who would go to the meeting and in fact write the minutes of the meeting?

Mr Landry: That is correct. In the past, in fact, the ministry staff have been chairmen of the PACs, and that is another change that we are making. We are going to ask PACs to elect their own chairmen, and then my staff will become basically secretaries to the committee.

Mr Morin-Strom: And these ministry staff all report to you.

Mr Landry: Yes, they do. It is part of all the other duties they have. Each PAC would have a co-ordinator who would be responsible for the maintenance of the PAC.

Mr Morin-Strom: Do you have any idea what the time commitment from those 10 ministry staff would be, to give us an idea of what the real costs in the ministry are for this?

Mr Fell: For the PACs alone?

Mr Morin-Strom: Yes, for the PACs alone. How much time do they spend on them?

Mr Fell: The PACs have traditionally met between three and four times a year, so there is half a day or three quarters of a day at the actual meetings. Then there is the producing of the minutes. That would be the function with a provincial advisory committee. There are phone calls and things like that, but that is very difficult to—

Mr Morin-Strom: And trying to find new appointees, I suppose.

Mr Fell: Yes.

The Chair: You say it is tradition that they meet three or four times a year. There were 23 meetings last year, 24 the year before and 30 the year before. How many committees are actually active? Is it two or three or four? I know there are 20 that have membership, but how many are really meeting?

Mr Landry: At this time there are about five that are really meeting. It kind of averages out. It is very hard to predict because, for example, with electrical workers we had more meetings last year because of a hot ratio issue. Now, all of a sudden, they are meeting more often. Other ones perhaps would not meet at all.

What we are saying is that we would like to see them meet even if there is no hot issue. I do not know if we can do that for all trades, but it is just to provide a forum for discussion too. It is hard to judge how many will meet.

Mr J. M. Johnson: I have a couple of questions. You have 39 PACs, 20 active, maybe not 20. Would it not give more strength to the ministry if it was cut down substantially? You have motor vehicle mechanic, farm equipment mechanic, automotive machinist, heavy-duty equipment mechanic, motorcycle mechanic and boat motor mechanic. There are half a dozen classifications, half a dozen PACs. Why would one not look after the basic concerns of all?

Mr Landry: In fact there are some that are in the same PAC. Plumber and steamfitter are on the same PAC. I am not really sure historically why we ended up with so many PACs vis-à-vis how many trades are active in them. I think it will probably happen that we will have to do some rationalizing. Certainly if you look at the motive power trades you talked about, there is a lot of overlap in the training, for example.

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Mr J. M. Johnson: I would think it would be more meaningful to the minister to have one recommendation from a group representing six so-called PACs.

Mr Fell: I would just like to say, when you talk about the motive power trades, it has been tried in the past to have one provincial advisory committee for all motive power trades.

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What happens because of that, because there are six or seven different vested groups in there, is that usually one or two persons from each group get to sit on the provincial advisory committee. What happened was that you got a lot of in-fighting; somebody wanted the curriculum changed for his particular needs.

We are looking at having a core program so that anyone who wanted to enter the motive vehicle trade would take the core program, and then there would be offshoots from that for farm equipment, heavy-duty or whatever it may be. In that case, probably it would substantially reduce the number of committees. I would not want to walk away from here and say that there is just going to be one committee, but it may cut it in half, one third or something like that.

Mr J. M. Johnson: On another approach—and maybe this is not your field, but I would like to toss it in—a couple of years ago we had a new industry located in one of my communities, a small community of a couple of thousand people. It was prefabricated homes. They wanted to employ 100 people; they wanted apprentices to work with qualified carpenters.

We met with the federal government and the provincial government, the Ministry of Skills Development, and there was no support whatsoever. Both levels of government said that all the programs that were applicable had been used up. This was only in the month of June. But there was a potential to train many young people in carpentry. The company was on the verge of not coming to this location because of the lack of potential employees.

Mr Landry: I am not sure I understand your question in that case. My staff are prepared to do standards for employee-specific trades. In fact, we have almost 600 of those out. Carpentry, however, is a regulated trade; it is a voluntarily regulated trade, which means you do not have a licence to do the job, but more and more you are seeing employers are asking for a ticket. We do purchase quite a bit of training for carpenters in the province; I am not sure about your specific area. We have a problem with the college and demand and so on.

Mr J. M. Johnson: It is north Wellington. There are no colleges very close.

Mr Landry: Yes. Okay.

Mr Fell: Was the company looking for some support to pay the employees?

Mr J. M. Johnson: They wanted to hire 100 new employees. They were quite prepared to hire a substantial number of trained, skilled carpenters, but they also wanted some unskilled people to train to be carpenters. They were looking for any type of assistance from either level of government to assist them in the hiring program.

Mr Fell: With the apprenticeship program, the employer has been the one who has paid the apprentice the wages. The ministry is responsible for paying for in-school training, the development of standards, development examinations and things like that. With the actual paying of the apprentice, the apprentice is expected to be a part of the employer's work staff, and in most of the regulations we have a sliding scale to pay the apprentices, recognizing the fact that an apprentice who comes on the job the first day is not very productive, usually. It goes by training period. The scale goes up as their skills increase. There have been other programs, not through our ministry though, for subsidizing employers for the wages.

Mr J. M. Johnson: In that particular situation there was no support from either level of government. That was a couple of years ago. Maybe it has changed.

Mr Landry: If they register as carpenters, we will pay for their in-school and the federal government will pay for their unemployment insurance for the time they go to school.

Mr J. M. Johnson: Do you have a limited amount of money for each year?

Mr Landry: Yes, I do.

Mr J. M. Johnson: And it is used up quite quickly.

Mr Fell: Yes.

Mr Landry: Yes, it is used up.

Mr J. M. Johnson: It comes in 1 April and it is gone by June.

Mr Landry: It is negotiated with the colleges and other training delivery agencies. My district managers go to each college and whomever else is offering in-school training and negotiate what we can buy within a pie of money, and that is the limit. For this year it was \$50 million.

I should clarify that the training would happen all year. Just a commitment is usually done at the beginning of the fiscal to say you can buy this and different intakes throughout the year. About now we are finalizing negotiations, when we get our allocations of what exactly we are buying. There is some flexibility.

Mr J. M. Johnson: Do you find you have enough money, or you are usually short?

Mr Breaugh: I will bet you are usually short.

Mr J. M. Johnson: When do you run out in the year?

Mr Landry: What happens is we can only schedule so many a year and it is not really a question of running out, as such. If we have \$50 million then we will schedule enough courses to spend \$50 million.

Is there enough money? No. One of the problems with apprenticeship and its funding is that it is market-driven. We do not control the number of people who become apprentices, the market does. However, a couple of years ago, when the federal government put a cap on it, we had a limited pie with an uncontrolled intake, which is a little bit difficult.

Mr Keyes: Again, due to the fact that I have not sat on this committee before, I apologize for any unusual display of ignorance I might display.

The Chair: I will call you to order.

Mr Keyes: You can call me to order when that happens.

Mr Breaugh: How will we identify it?

Mr Keyes: You will notice I said out of the ordinary. I just had a chance to look quickly, in a few minutes, through the sunset review of provincial advisory committees. I was wondering, first of all—I suppose with tongue in cheek—it seemed to be a strange type of review because it called for sunset review of the PACs, but then the next sentence said, "And to seek approval for continuance of the PACs for an additional five years." So there is a foregone conclusion, more or less, before the review is done as to what would happen.

Mr Breaugh: You do not understand the Liberal philosophy at all, do you?

Mr Keyes: If you look at it, I think in sunseting it would appear that you have sunsetted two. I was going to ask why were none sunsetted, but I do see at the very last paragraph that they did not reappoint watch repairer and the alarm and security system installers, because the latter was taken up by the fire marshal and the former was decided not essential today.

On page 4 of the research thing I went through today it talked about the cumulative totals of the meetings for the three most recent years, showing 1988-89 as 23 meetings. But when you read the sunset review, on page 5 it says there were 47 meetings of the group. So there is a significant difference in statistics between them. I thought that would be an interesting comment from David's side, perhaps, or from Peter's.

In the review—I did not see anywhere, but it was just touched on before by Jack, because of the staffing—you had 10 staff assigned to these and they acted as chairpersons. With the large number that you intended to have, why would you not consider grouping some of those trades together so that the day's meeting that brings them in could probably go through the variety of trades that were related to a specific aspect, whether it is the construction industry or manufacturing or those areas? I would have thought that might have happened.

In your revitalization, also from the report, on page 5 of the sunset review, there were no changes whatsoever between the actual for 1987-88 and 1988-89, although the planning was an approximate 50 per cent increase in all cases.

Could you comment on some of those? I notice on page 5 there were 21 active; you planned that there be 31, but it ended up being 21. So, while out of 50 per cent, activity planned for revitalization and the same in the membership, that just did not happen. It remained constant from the previous year.

Mr Landry: We very much underestimated how difficult it would be for us to get these up and running. So we had much more ambitious plans than actually turned out to be. I have no other explanation, other than it turned out to be more difficult than we thought to really get the representation that we thought was required. George has spoken a little bit about why we have not joined more PACs in terms of sectors.

One of the things I understand, if you look at the construction industry, for example, is most of the craft trades in there are very, very concerned with their craft. There is very little acceptance, from my perception, of having plumbers commenting or advising the ministry on the training of electricians. That is where it gets a little tense and a little difficult for us to be joining. We do where we can and we do have some. I mentioned plumbers and steamfitters, and we have some under the motor vehicle mechanic and transmission mechanic. We try to do it, but it can get a little tense.

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Mr Keyes: I guess, tongue in cheek, an excellent way, I would think, of trying to solicit some additional funds is to make use of the 130 MPPs around the province. All have pretty close contact with their workforce, whether it be union or non-union employers, large or small. I personally believe they have a vital role to play. I talk to a lot of tradespeople in my area and hear consistently requests as to why more things are not happening. To me, the PAC is an excellent means of doing it.

Have you determined also, as to the immediacy; is it the pressure points that are going to determine who you are going to revitalize first? How are you going to determine the ones you

revitalize, and have you got any plans for 1990 that could be shared with us today?

Mr Landry: As to who we revitalize first, there are two factors, really. On the pressure points, we have, for example, air-conditioning and heating mechanics, and you have, all of a sudden, an explosion of residential activity. That market pressure would tell us that is a PAC that we should have active fairly quickly and it becomes a priority.

It could be a simple matter of recruiting, as well. In this particular trade, for whatever reasons, we were able to get some members up who agreed to serve, so let's get it through.

Mr Pelissero: Do the committees deal with conflicts within apprenticeship training or certification? I will give you an example. The committee that I was looking at dealt with refrigeration and air-conditioning mechanics. I have an individual in my area who is concerned that some individuals may be receiving their training from someone who is certified dealing with furnaces. At the same time, when the work is not on in the summertime for the furnaces, they are doing air-conditioning work on the side, or as part of their job description, and therefore they are looking for advertising that they will train individuals in that specialty. Do the committees deal with that kind of—

Mr Landry: Yes, that is one of the primary values to us of having a PAC. It provides a forum to deal with that. In the example you used, we have a segment of the economy that is saying we need a shorter apprenticeship for residential air-conditioning because you do not need maybe a five-year apprenticeship, being able to put stuff on office buildings and apartment buildings, if all you are doing is putting in residential air-conditioning.

That is one side. The other side of the argument is that you begin to dilute the trade.

Mr Pelissero: Correct. My constituent believes you are diluting the trade, from his perspective.

Mr Landry: The PAC is a forum and that is one of the things we have for the agenda of the meeting; the whole idea of whether we should in fact come in with a shorter term of apprenticeship only for residential contractors.

Mr Pelissero: Has that been a recommendation of the PAC or is that a subject matter for the future?

Mr Landry: It is going to go before the PAC, yes. At the first meeting that will be probably the hottest issue for discussion.

Mr Pelissero: When is that meeting scheduled?

Mr Landry: It is within a month. I cannot give you the exact date off the top of my head.

Mr Pelissero: How would the committee deal with both sides of the issue? Do they deal with it among themselves? I am saying, assume this committee was the PAC and we were having a debate and members were on opposite sides of the issue, does the committee then seek outside advice or direction or do they close the door and beat each other up until they have a solution?

Mr Landry: You can have both things happen. If the committee would like more research done, more outside authorities or whatever to come in, we are prepared to have that. At other times they sit in a room and they beat each other up until they come out with some kind of compromise.

Mr Pelissero: Are the meetings open or closed?

Mr Fell: It depends whether they are my meetings or whether the other chairman's meetings. I tend to like them to be closed by invitation simply because on one occasion I had one of the prime labour lawyers in the province of Ontario come in at the last second and want to present a brief. That was completely unfair, as far as I was concerned, to everyone. They had not seen it, they were in no position to discuss it. Had he notified me a day or a week before and given me copies of it I probably would have said, "Sure, come on along."

Mr Landry: We invite people to come. If there is a contractor who has been really concerned about the issue and wants to be at the table, we can make accommodation for that person. It is just that the meeting is not for everybody in the world; it is a fairly small situation.

Mr Pelissero: Is it possible, if I gave you my name and card, phone number etc, that you could get to me the agenda and the time of that discussion? This constituent is concerned in terms of the dilution as opposed to the shortening of the process. Is there a means for either that individual to write a submission or come before that committee to make his concerns known?

Mr Landry: Yes. In fact, they can do a submission in advance. In fairness to the members, usually they have a chance to read something. But we are prepared to be flexible in that.

Mr Pelissero: I can see you at the end and give you my card. Thank you.

The Chair: The per diem for members serving on a provincial advisory committee is \$50 a day, I believe. Have there been any complaints to you about the adequacy of that compensation?

Mr Landry: We are reviewing that exact question, whether that \$50 is adequate. A couple of things to keep in mind: historically, because there were large contractors and union staff, they were on salary, the per diem was not so much an issue. Now that we are seeking out smaller contracts and so on—contractors and employees—it may very well be an issue and we are looking into increasing it.

The other thing, though, is that a lot of people do not take the per diem. They do it for reasons of public service or they are on salary and they do not want the extra dollars.

The Chair: Have the PACs contributed—PACs, not the staff, not you—to any of the policy decisions that the ministry has made in the last two, three or four years? For instance, the fund relating to tools and that kind of thing; do the PACs have any impact on that decision? How did they have an impact on that decision?

Mr Fell: The provincial advisory committees and various members—if the committee was not meeting at that particular time when the tool fund was started—went to the members and asked them to provide us with tool lists and costs which we would then verify so that we could know exactly what they would need. That is one example.

The Chair: How many PACs did you go to with that?

Mr Fell: All of the active ones at that time.

The Chair: So that is two or three?

Mr Fell: No, not at that time, it was not. It is now.

The Chair: What was it at that time?

Mr Fell: Two years ago it would have been 15 or 20.

The Chair: So it has decreased.

Mr Fell: Because of the revitalization, yes.

The Chair: That does not sound like revitalization to me.

Mr Landry: We allowed them to terminate and then we went through a more elaborate process of getting members, which is what took us longer, so that we used that gap of how many are actually active.

But they influence, both formally and informally. The tool fund, for example, would be a very good source of intelligence of what are the barriers facing apprentices. So yes, if we go with that program, how much? How much do we give the motor vehicle mechanic, how much to a cook?

The Chair: Is there a formal structure? I know in some countries and jurisdictions, for different trades, there are trade guilds and that kind of thing where there appears to be a more formal structure to contact the trade or the tradespeople. Do we not have anything of a parallel here?

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Mr Landry: We do not have, for example, some of the really elaborate sophisticated systems like there are in Germany on trade. Mostly it is through the trade unions, which really can be very sophisticated in terms of advice to us and provision of training to their membership. It is usually along those bases. The associations, otherwise, to my knowledge, if existent, I am not aware of them.

The Chair: Your answer to my question, going back to the per diem, is, I assume that you have not had anybody complain to you about the \$50 a day they are receiving.

Mr Landry: No. It has not been a complaint from the members. It has been us saying we know, particularly when the economy is good, it costs these people a lot of money to serve if they are not on some kind of salary or if they are hourly employees, for example. It was us saying, "Maybe we should have a look at that."

The Chair: I realize that none of your jobs hinges on whether provincial advisory committees exist or do not exist. I just was wondering whether or not any of you who have worked with PACs and worked with various trades have any better method? Or have the trades come to you and said, "There's a better way to do this"? Are there any other kinds of structures in any other jurisdictions that you are aware of where you can make contact with trades, perhaps in a more enthusiastic way?

Mr Fell: In most jurisdictions, certainly in Canada and the United States, there is some form of PAC or an advisory committee to advise some central group. It may not always be the government. In this case it is.

It has been discussed at a number of the PACs over a period of years, whether there was a better way of doing this. The gentleman over here referred to a number of other committees that have been struck to advise different groups that would then feed into the PAC. But a very quick and simple answer is, we have not found a better way as of yet. I will talk with Peter for a minute. I do not think that means we are not going to keep looking.

The Chair: I think there is a great need to elevate the social stratification of our tradespeople in Ontario, and I have not seen any government, I think, achieve that. I just do not think, from what I have heard today, that there is—I know that is not the role of the PACs, but it seems to me that this is not working.

If you were down to two or three committees last year, in operation, and they are not coming to you and saying, "We want a committee struck and here are five or 10 people around the province who are dying to get on this committee or want to be on this committee," then it seems to me that it is government-driven rather than the crafts saying to you: "Something should be done about our craft. Let's get on with it. Let's deal with this problem in a reasonable, rational fashion."

I just find a great deal of reticence in supporting the continuing existence of this structure. It just does not seem to make sense when there is so little interest from the trade part of it. I think your time could be much better spent doing something else maybe. I do not know.

Mr Landry: I guess I would say that in certain trades there is a lot of interest and if we close them down it will be very hot. They view these forums as necessary and they should be there. If nothing else, it is to maintain the relationship—I think there would be some trades, the plumbers and electricians, for example, who will be very angry with us if we close this forum down.

The thing to understand also is that the PACs are only one aspect of the business that we are in. The social status of tradespeople, we approach that through marketing efforts, through getting into the schools, talking to teachers, guidance counsellors, parents. There are a number of other activities that we do to try to increase the status of tradespeople, but it is a social phenomenon really. It is very difficult for us to change people's minds about what they want their kids to do, and more so with young women. So PACs, I think we have to keep in mind, are fairly limited in terms of what they do. It tends to be towards regulations and those specific technical things. Marketing and outreach and all that, are other activities of the branch.

The Chair: Do you think that you raise, or that there is, an unrealistic expectation among the tradespeople who have heard that there is such a thing as PAC? With so few really operating—five, six, seven now—do you think it is fair to continue the guise that there are 39 of these PACs, when in fact there is only a minor number of them?

Mr Landry: I think it is fair to talk in terms of potential. That is how many we think we should still keep on the books, so to speak, and are worth some effort to revitalize. But if it turns out that only 20 trades are really interested, I would not be averse to going with 20. I cannot speak on behalf of the minister and what he might want in those circumstances, but I think that is a fair comment, that if only 20 trades are really interested, then let's do 20. I understand you raise expectations and so on, but I think right now, particularly in certain trades, there is not an expectation but they use the forum. Again, it depends on what is happening in the community. We have residential air conditioning, all of a sudden that becomes an issue and the tradespeople are much more interested in the PAC than they ever were, but at least now they have a forum.

The Chair: I guess Mr Breaugh brought up the point. Would it not make more sense to say to tradespeople, "A PAC will be created if the tradespeople come to us and say they want

one because they have either a specific or a long-term interest in advising the minister"? It seems to me, in Mr Fell's own words, he is out trying to beat the bushes to find people to serve on these committees.

That says to me that there is not a great deal of interest out there. You have said yourself, Mr Landry, that you thought you could do a lot more, in the year since sunset review took place, than has been accomplished because of a lack of interest. Would it not be better to say right out that the policy is that we will create a PAC, or whatever else you want to call it, if in fact the trades group or a group of concerned people has a problem, then strike the committee and then, once the problem is finished, the committee is done?

Now, according to our research we have, I guess, 102 people—I do not know what the present PAC total membership is—but over 100 people around this province who have been appointed to committees and probably are sitting there wondering: "What's this all about? I have been appointed to a committee and nothing is happening." Do you not think that approach would be perhaps straighter, more forward and more beneficial and that you would not spend a lot of time running around trying to create something that is maybe not needed?

Mr Landry: One of the things, though, is in terms of trying to achieve a balance. There may well be lots of interest in the large contractor, unionized community, and we could very well run our PACs with those as members. I guess that is the choice. Do we run them even if it is harder for the small contractor, the unorganized worker to get to the meeting? I mean, do I still run it without them? That, I guess, is the debate. We are choosing at this moment to say: "Okay, we can get lots of union interest and large contractors, particularly those close to Queen's Park, and we can run them." We can run a lot more like that, but I guess we have said, "Okay, that's fine, but let's make the effort anyway to get into the community and see whom else we can find who might have a vested interest in this."

If it turns out that, "Look, we just cannot make it go; they are not interested; they are not going to travel; it is not important enough to them," we will have to reassess that.

The Chair: Does anybody have any other questions? Thank you very much. We will not be needing you this afternoon, obviously.

For members of the committee, we are scheduled to sit at two o'clock—At 1:30, sorry. I do not really see the necessity to do that. Tomorrow morning we have Dr Gandz to talk about the College Relations Commission. I believe David has prepared a brief summary of his report. I guess it would be better tomorrow morning, after Dr Gandz makes his presentation, if we have a few minutes to discuss our thoughts and give some direction to David on the PACs. Are the same members going to be here tomorrow?

Mr Keyes: I do not think I will. I am just subbing today for Brad Nixon. I will be in the standing committee on social development tomorrow.

The Chair: Would you prefer to go for another 10 minutes and try to give some direction to David right now? What is the feeling?

Mr Pelissero: It makes a lot more sense.

The Chair: Okay. We can meet in camera, so we will not need Hansard any more.

The committee continued in camera at 1210.

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Staff:

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Fell, George, Program Co-ordinator, Apprenticeship Branch



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Legislative Assembly of Ontario

Second Session, 34th Parliament

Official Report of Debates (Hansard)

Thursday 8 March 1990

Standing Committee on Government Agencies

Agency Review

College Relations Commission

Assemblée législative de l'Ontario

Deuxième session, 34^e législature

Journal des débats (Hansard)

Le jeudi 8 mars 1990

Comité permanent des organismes gouvernementaux

Étude des organismes
gouvernementaux

La Commission des relations de
travail dans les collèges

Chair: Norman W. Sterling
Clerk: Harold Brown

Président : Norman W. Sterling
Greffier : Harold Brown

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Thursday 8 March 1990

The committee met at 1012 in room 228.

AGENCY REVIEW

COLLEGE RELATIONS COMMISSION

(continued)

The Acting Chair (Mr Polsinelli): With the unanimous consent of the committee and in the temporary absence of the chairman, I call this meeting to order. I would like to welcome Professor Jeffrey Gandz. Professor Gandz, do you have a presentation to make to the committee regarding your report?

Dr Gandz: I will make some brief comments, but I gather the committee is interested in asking some questions, so I will be very brief.

The Acting Speaker: That is fine. Perhaps you can make your comments and then we will have an opportunity for the committee members to ask their questions.

Mr Fulton: Mr Chairman, in view of this late starting time and the fact His Excellency is coming here this morning, are we going to recess? Just so that the delegation understands what our schedule may be this morning.

The Acting Chair: The Chair will respect the wishes of the committee.

Dr Gandz, perhaps you can start now. I see the chairman has also arrived.

JEFFREY GANDZ

The Chair: Welcome to the committee, Dr Gandz. My name is Norm Sterling. I am the chairman of the committee. Please excuse my tardiness. I got caught with the Minister of Transportation, trying to get a fair shake for eastern Ontario.

Dr Gandz, we had the College Relations Commission, as you are probably aware through our researcher, Mr Pond, in front of us and we had some concerns about what was happening with regard to this whole process and we were very much interested in your report. Perhaps you would like, first of all, to give us a brief presentation, and then I am sure many of the members of the committee would like to ask you some questions.

Dr Gandz: Okay, fine. I was appointed as a one-person commission to look into what I have often called the troubles in the community colleges, which are probably somewhat like the troubles in Ireland; a long history of fractious, difficult, extended bargaining that has taken place in the colleges since their inception. It was felt at that time that a kind of really systematic look at how collective bargaining was conducted in colleges may help to improve things in the future. I undertook a study which was to examine the structure and the process of collective bargaining and to try to identify ways in which it might be improved.

The bulk of my report has to do with fundamental structural and process elements. The general recommendations were wide-sweeping, in the sense of changing the role of the Council of Regents of the colleges, creating an employers' association from the colleges so that it could proceed to negotiate with the

unions, changing the structure of bargaining units and changing the legislation to try to remove some of the impediments to settlement that were inherent in the original Colleges Collective Bargaining Act. A rather small aspect of this whole process was the role of the College Relations Commission. I will address my comments to the recommendations that I made there and my analysis of the situation, but I will be happy to answer any questions about the broader study.

The College Relations Commission, as I know you covered from your previous examination of it, was set up under the Colleges Collective Bargaining Act to do a number of things: to train and appoint third parties, such as mediators, fact-finders and arbitrators; to make determinations concerning bad-faith bargaining and jeopardy; to determine procedures and processes and actually carry out the votes of various kinds in the colleges; to gather statistical data on salaries, workload and other terms and conditions of work; and to generally oversee the process.

For all of those necessary functions at the time that I looked at the College Relations Commission, it was funded to the extent of \$60,000 from the Ministry of Colleges and Universities. Needless to say, the amount of energy and effort devoted to the colleges was commensurate with the amount of funding.

In effect, my understanding of it was that the College Relations Commission was really kind of an afterthought or an appendage to the Education Relations Commission. They were essentially the same people, the same staff, and this is a commission that has been set up to function in the elementary and secondary school sector in Ontario. What it had done over the years was to use essentially the same core of mediators and fact-finders and put them into the colleges' situation to deal with their process of collective bargaining. I had been one of those people over the years, and therefore my involvement in the system.

The College Relations Commission acts as a quasi-judicial body in one respect, and that is the determination of bad-faith bargaining. It also handles this thing called jeopardy, which is an interesting concept, one you may have some questions about. It generally just assists. It does not do most of the things it was asked to do in the legislation and has not been funded to do that.

I made a number of recommendations, and this is slightly barbed, but the biggest jeopardy at the moment in the whole college situation is that nothing is happening, but I made a number of recommendations to beef up the College Relations Commission. Those recommendations have to be taken in the context of the other structural things that I suggested.

I have recommended a number of changes in the composition of the bargaining units, which would probably result in questions about certification and the appropriateness of bargaining units. I recommended, in fact, that the new College Relations Commission take on the responsibility for handling those issues as well as bad-faith bargaining and some other things.

In effect, it would mean that the College Relations Commission took on some duties which were currently handled by the Ontario Labour Relations Board but which, in my view, could be handled more expeditiously and with greater expertise by the College Relations Commission, rather than going

through the fairly long and involved process of dealing with the OLRB. I recommended that they take on those functions and that they receive some additional funding to do that. I think it was a somewhat nominal \$200,000 at that time, and that would essentially have been to add a staff member who might specialize in the colleges so that they could begin to do those things that were in their mandate. My recommendations were fairly wide-sweeping in terms of their taking on additional responsibilities and building up the staff to do that.

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The current status—as far as I am aware, and I have not been in the information loop for some time; my report was submitted in January 1988—is that there was a commitment by the then minister, Lyn McLeod, to enact most of the recommendations. There was then the reorganization of the Education and Colleges and Universities ministries in whatever portfolio, and nothing has happened since.

There has been one severe strike by the faculty since the report was put in, and as I understand it, but it is really quite informal, there are difficulties remaining on both the staff and the faculty side, which leads me to believe that the difficulties will carry on in this segment until something is done, but as far as I know, there are no initiatives, legislative or otherwise, to deal with this situation at the present time. I have to say that my sources are not very good in terms of the internal functionings in the ministry.

The Chair: When you were preparing your report, how wide was your consultation in preparing that report?

Dr Gandz: It was extremely wide, and it was an iterative kind of consultation. In addition to requesting briefs from union groups, college teachers, college staff, the Council of Regents, boards of governors of colleges and college administrators, we took a look at the United Kingdom and the United States approach to collective bargaining in the college system, and as I began to develop and refine recommendations, we went through several rounds of consultation with the Ontario Public Service Employees Union, which was the primary unionized group involved, and with the governors of the colleges and so on and so forth. It took place over about a nine-month period, and hopefully, at the end of that, the recommendations that were made were no surprise to anybody who had been involved in the system.

The Chair: There was no charge that you heard, in public or privately, that there was a lack of consultation? We have not heard anything here.

Dr Gandz: I do not believe so. We had some groups, student groups, for example, that were invited to consult and did not.

The Chair: Out of the report, what would you expect the principal issues would be that might emerge for a government to decide? I guess it would be the union, the administration and the Council of Regents who would be the three principal players.

Dr Gandz: The key dilemma for the government is really in the structure. We have had this thing called the Council of Regents, which nominally—it is not nominally; it is there in the legislation—is responsible to be the bargaining agent for the colleges. The dilemma is that the Council of Regents neither represents the colleges nor is elected by the colleges nor in fact manages the colleges in managerial terms. In fact, it has been

perceived and is perceived widely in the system as a barrier or a buffer that the government has put between itself and the colleges.

The net result of that in collective bargaining terms is that they are considered for the most part an obstacle at the bargaining table, not the bargaining agent. Indeed, the parties—and I would in their place—pay them lip service and, basically, their challenge in collective bargaining is to get the minister on the other end of the line to cough up the money.

I believe this is primarily responsible for the stretching of negotiations over months and years, in many cases. It is not unusual to have 18 months pass after the expiry of a collective agreement before a new one is signed as one deals with various ghosts at the bargaining table.

My primary recommendation was to alter that structure, have the colleges themselves be the bargaining agent, through an employers' association, have the colleges develop their own collective bargaining directorate and negotiate then with the unions and ease that structural thing. A lot of the things that come out of that, a lot of the recommendations of the report, flow out of that basic structural change and are necessary in order to enable that structural change.

The Chair: How would the management have fiscal responsibility or the association have fiscal responsibility?

Dr Gandz: There were a number of options laid out in the report. This is a delicate issue, because my terms of reference did not extend to how we fund the education system in the province.

Basically, it could be handled through envelope funding, which basically said, "Here is what the colleges have in terms of funding in certain specific categories or envelopes." That could be given by the government to the colleges and that is what they have to live with. That is not unlike the university system as it currently operates.

Alternatively, it could be done in terms of block funding, where it was just a total amount and left to the colleges to decide how they wanted to manage it within instructional programs, support and so on and so forth, but the colleges in effect would decide that, rather than the government being directly involved at the bargaining table.

Mr Breagh: I want to pursue just briefly what has happened to this. I think most of us who have done some bargaining from one or both sides of the bargaining table know that if you cannot establish who is actually a player, you do not have much of a chance of actually coming to a resolution. I think that is our basic difficulty here.

There is no question that there are a lot of groups out there that, basically, their money comes from government. Municipalities, school boards, social agencies, all kinds of people; the bulk of their funding comes directly from a government. But when they go to the bargaining table, it is clear that there are two sides that know one another, that may not always like one another, but at least they begrudgingly respect one another, and they have something in common, a workplace. If you let them resolve their issues with people that they know and trust, provided they do that, eventually you will come to an agreement of sorts.

What happened to the notion that this would finally get resolved? I think, in general terms, people at the community colleges are aware that their major obstacle is that you cannot get a good bargaining process going here. It is very difficult. You cannot identify who the players are, who are the vested interest and sort that out, and there seems to be very little in the

way of incentive to do anything about it. So why did this process stop?

Dr Gandz: A rather glib answer is, it never got started. I do not think it was a matter essentially of stopping. There has been a very long history of a lack of preparedness of governments, of various stripes, over the years to let the process run.

In effect, successive ministers have taken very active or passive roles in the process, according to their inclination. When I became first involved in it, there was the perception—and it is perceptions that matter in this—that Dr Stephenson was a very active player and she would eventually decide the level of funding. That was perception; I have no evidence that it was the case. And there has been this constant sense that the level of funding is in fact determined by the level of pressure in the college system.

1030

I have to say that the strike before last resulted in a tremendous windfall for the colleges in terms of additional funding—I have heard somewhere between \$60 million and \$90 million—that was injected in order to relieve workload and represented a massive “win” for OPSEU, whose agenda item it had been. It resulted directly from the strike, and as we know, in collective bargaining we learn from our previous successes and failures. So there has been a history essentially of strike and extended negotiation being a very effective way to get the government to ante up with the kind of funding that the unions have felt to be desirable in the college situation. Again from a union negotiating perspective, it has been very much in their interest to pressure a great deal because they have a learning experience of having gotten more as a result of doing that.

Mr Breaugh: You said that in your opinion the structure was one of the major problems. I think I would concur, but I would define that just a bit. The structure for negotiating between General Motors and the Canadian Auto Workers is an extremely complicated thing involving sets of master bargaining and local bargaining, and it is not uncommon that at the very end of a very long, protracted negotiating process what stops the agreement from being finalized are lights in a parking lot somewhere under a local contract, but the structure works. What is at the essence of it, though, is simply that everybody who is involved understands the structure, so it really does not matter whether it is a simple, straightforward structure that is being used or an immensely complicated one. As long as everybody understands what the rules of the game are, and who the players are, a negotiating process can function.

I am intrigued by the notion that you have identified the structural problems that are here. Without being solidly identified with your particular proposals on it, I am intrigued further, that almost all sides have identified that the structure is the problem, that there is no good bargaining process in place. So I am confused as to why there has been no movement to alter that structure.

Dr Gandz: I am confused and amazed and surprised.

Mr Breaugh: As far as you know, it has just kind of stopped.

Dr Gandz: As far as I know, it came to a complete stop when Mrs McLeod left the ministry. Now I think that will probably be directed at Dr Brzustowski, who is the deputy, but I know of nothing that has taken place since the middle of 1988 when there was a clear communication to the colleges that the structure would be changed and it was announced that there

would be an employee association. It was announced that the Council of Regents would assume a different role, a very important role, as kind of a leader in development to the institutions. That is one of the things that I pointed out, that you cannot have a group operating as a leader in educational development if you put it into a conflict situation with the employees every two years so that it becomes the big bad monster, that kind of thing. You have to create a new role for them. As far as I understand, there has been no progress.

Mr Breaugh: Maybe, Mr Chairman, it would be a good idea to invite someone from the ministry to come tell us where the glacier is at the moment.

Dr Gandz: I might just pick up on one other thing. There is no doubt when the auto workers sit down with General Motors that it is General Motors which is at the bargaining table. It is very different in the college situation. They sit down with the colleges, but it is the government that is behind somewhere.

Mr Breaugh: Ah, but it is not clear which General Motors is at the bargaining table.

The Chair: Regarding the jeopardy advisement, the College Relations Commission told us there was no set of guidelines setting down exactly what factors they took into account. Have you any thoughts on the jeopardy advisement process?

Dr Gandz: I suspect it is the toughest decision that anybody like that has to make because there are really two elements involved in this. One really hits at the heart of what I do as an educator: how much is the person's education in jeopardy because he failed to attend a set of classes? My initial stance would of course be it is totally important, but there are obviously shades of it. There are classes and weeks perhaps that one could miss without creating a fundamental problem in an individual's education. So it is always going to be a judgement call. I think it is compounded in the colleges by about four factors.

One is that colleges do not offer homogeneous educational experiences. They do everything from a one-month program in undersea diving to basic high school completion, and yet when one declares jeopardy it is jeopardy for the whole thing. That, I think, is really a daunting challenge.

The second issue is that many students in the colleges have educational programs tied in some way to the funding. It might be a government-sponsored program that they have to take and they are paid unemployment insurance during that period, or it might be that they are on a co-op program with industry and their standing with the company that is paying the freight depends on the continuance of their educational program. So they have that element to deal with.

The third element is that many college students are self-funded through jobs that they hold and they work during non-term times. So if they miss a term and they have to make that up subsequently, that eats into their income generation potential in that slack period.

My sense is that in the declaration of jeopardy you probably have a number of people knowledgeable about the system to make an aggregate call that tries to hit the barrier between the students' right to an education and the employees' right to strike. As I look back at the jeopardy rulings that have been made, whether they be made in school boards or in the colleges, I suspect that the primary kind of reasoning is that this has gone on for N weeks—it is usually three to four—and there is no end

in sight. That is the point at which you say there is jeopardy, not just in terms of the loss of the time to date but in an inability to settle out there in the future. I do not know what other criteria one could use.

The Chair: I met the president of Algonquin College at the airport going home in November and I said, "Can you tell me how many students dropped out as a result of this strike?" He said, "No problem." He sent a letter to me the next week. He told me that 853 students out of about 10,000 dropped out, either as a result of the strike or partially as a result of the strike.

When we had the College Relations Commission in front of us, it could not tell us how many students had in fact dropped out as a result of that strike. It was, I guess, disarming to me for the commission that is trying to determine jeopardy not to have those kind of statistics at its fingertips. There is also, I believe, in your report a concern that during the fact-finding process there was a lot of argument over fact, during that part. It does not seem to me that there should be argument over fact. In fact, facts should be fairly easily established, and therefore you are not putting issues into debate; you are trying to take them out. What about the information-gathering ability of the College Relations Commission?

Dr Gandz: The information-gathering ability is there if one thinks in terms of the skills. In my experience—and I have dealt with them over perhaps about a dozen years—they are pretty highly skilled people who could do this stuff. The resources are not there. There is not a full-time person looking after the colleges, a person within that. That, again, is part of the dilemma.

The Ministry of Colleges and Universities itself has its own database, and it has said, "We have all of those data that are necessary." Putting it bluntly, it is a very highly suspect database. It is an employer database as it is currently perceived by OPSEU, and there is lots of information that they do not have. A point made by myself, by Professor Whitehead over the years, by Professor Downie when he was involved in this, is that in the absence of an agreed-upon, solid, honest database we do not know how collective bargaining can proceed well in that college system.

The primary recommendation on the funding was to give the College Relations Commission the necessary staff to pick up those informations, and there are lots of them. We need to know what is happening in local agreements in the colleges. We need to have information about class sizes, instructional loads and so on that are honest data collected by mutual partners.

The Chair: They seem to be somewhat uninterested in collecting the data. In fact, I believe the answer to the questions on that was that they had collected that kind of data at the very early stages of the commission and nobody used it. Is that valid?

Dr Gandz: I cannot comment on whether they are uninterested.

The Chair: That is my perception.

Dr Gandz: My consultations with the College Relations Commission have always been that if we are given the resources, we will collect these data, that we consider them to be important.

The history of the relationship between the College Relations Commission and the colleges is in itself a fractious one. OPSEU has always taken the stance that the College Relations Commission is not a neutral party in these things. I think in part

that has to do with some interpersonal arguments that took place in the early days of the commission.

The Chair: Would you be available at about 1130?

Dr Gandz: Sure.

The Chair: Okay, we will try to meet at 1130.

Dr Gandz: That is fine.

The Chair: Sorry for the interruption. We forgot about the Governor General's visit when we invited you here.

The committee recessed at 1044.

1131

The Chair: We will continue on in order to allow Dr Gandz to escape.

Your report talked about local versus provincial bargaining, and I just wanted to get some of your views with regard to the kind of issues you think would be better negotiated at a local level.

Dr Gandz: I think almost everything except basic salary and benefits setup could benefit from being negotiated locally, particularly working conditions, class sizes and so on and so forth, essentially to reflect the different mix of activities in the individual colleges. The fly in the ointment on that is of course the colleges have virtually no source of revenue, unlike the school boards, which have a local taxation base. As long as the main funding is done centrally through government, then it is hard to argue that bargaining should be really broken up into relatively small units.

I think one of the clear themes throughout the report is that one could make a convincing case for everything from total central bargaining to completely college-by-college bargaining. The road that I chose to recommend, which some people would call a two-tier bargaining system, in effect tries to take the best of each and probably fails in being perfect on any score. I think basically I have come out very much in favour of extended local bargaining on local issues.

The Chair: One of the issues I think recognized by this committee—and I am not certain whether it was when the College Relations Commission was in front of us or it was another agency—is a difference in terms of the living costs in various parts of the province. In talking to a few of the college teachers and lecturers over the number of disputes that have occurred in the last while, I can recall in the last—not the one in November, but the dispute prior to the 1989 one—there was a lot of feeling in the Algonquin College area, which I am most familiar with, that the teaching profession there was not so much concerned with the salaries but were concerned with the conditions, the equipment and that kind of thing.

I kind of liked your suggestion, prior to us breaking, about a package, going to Algonquin and saying: "Here. You work out your deal with your own teaching people and divide it up into how much is going to go in equipment and how much is going to go into working conditions and how much is going to go in as teachers' salary." I have a little bit of a problem in terms of going to province-wide bargaining, because I think in the Toronto area, quite frankly, teachers should be paid more than they should be paid in the Ottawa-Carleton area because the costs are quite substantially different.

Dr Gandz: There is, of course, absolutely nothing to stop the union and the Council of Regents negotiating such a deal. Basically, if the union came back and said, "We want regional

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differentials," that is open for bargaining under the current system. You do not have to go to a package process in order to do that.

The Chair: At our secondary school level there does not seem to be a problem in having some differentials. The differentials are not that great across the province, but there are some differentials from board to board.

Dr Gandz: And, of course, significant differences in the tax bases and in the levies that go to the school system. So it is very much a local political decision in the school system.

The Chair: The College Relations Commission itself implied or stated—I cannot recall which—that there seemed to be very little reason for both sides to settle in the present structure. If it recognized that, do you think tinkering with our College Relations Commission is going to solve the problem?

Dr Gandz: Oh, no.

The Chair: I think we can make some recommendations here in the committee, but by tinkering with that part of the process, is it going to resolve the problem?

Dr Gandz: No, and I think this is really a central issue. Of my report—it is something like 300 pages—I think I spent eight or nine on the College Relations Commission. That is not to belittle its importance, but in the whole scheme of things, this is not going to be the thing that makes the major difference. I think it can facilitate, it can help, but the real issues are far broader than the role of the College Relations Commission.

The Chair: Do any other members have questions they would like to ask?

Mr Tatham: I think you asked the questions that I have been asking privately, thank you.

Dr Gandz: I wonder if I may just try to deal with one thing. I may have given an inaccurate impression about data gathering earlier on.

The data gathering that the Education Relations Commission does is primarily from collective agreements. It gets 100 to 200 collective agreements, analyses them clause by clause by clause, looks at grievances and so on and so forth. That has become a database that is used in educational bargaining in the school system.

They do not have that kind of information on the colleges. They do not have information on workload. They could not tell you how many grievances there are in the system, because that is the stuff that has not been set up to operate, it is the stuff that has never been funded and it is the stuff that they have never gone after in an aggressive way.

To me, as a third party, that is the kind of thing I would love to get a hold of. I might add, however, it is not a trivial task. Even as the commission, with the funding where I could have gone out and found this information, I found it a horrendous task to simply find out the number of grievances that existed in 22 colleges, because the colleges themselves are in many cases not set up to gather and process this information. If you say there are data lying around which they could pick up and get, I think that would be a misapprehension. It would be an extremely difficult and professionally demanding task to set up that database and have it clean, reliable and valid. It is not a trivial task.

1140

The Chair: I am glad you have clarified that, because I think I was under a little bit of a miscomprehension, if you want to put it that way, that the data were lying there and they were ready to be picked up. But I still say, notwithstanding that, there has to be some leadership as to how the data are forged and asked for and that kind of thing, and it seems the College Relations Commission would be the ideal body to do it.

Dr Gandz: In fact, specifically, under the wording of the act, they are supposed to do it. The act mentions gathering statistical data on salaries, workload and other terms and conditions of work, which is important, and it is not done. I just wanted to correct that.

The Chair: Yes, I appreciate that. Thank you very much. We certainly appreciate your coming in front of the committee and being as frank as you have been with the committee.

Have any of the committee members any thoughts as to what we might want to do from here on in regarding the College Relations Commission?

Mr Breough: I would suggest that the next logical step is to get a response from the ministry on the status of all of this. Do you want to invite the minister to come? If it were me, I think I would want the minister present for this kind of stuff.

Obviously the minister would want to have some time and some notice, so why do we not just simply invite the minister to respond and provide us with an update as to what is the status of this report; are there any other changes? I am not aware of any proposals to change that have been discussed, at least publicly. Is that an agreeable thing to do? I think we want some response, and the normal way would be to invite the minister to attend and provide us with some updating on it.

Mr Polsinelli: What specific issue? Are you just concerned about Dr Gandz's report?

Mr Breough: Yes. That is my personal prime concern.

Mr Polsinelli: I do not see anything wrong with requesting information from the minister as to the status of the report and how he is dealing with it. I think we have some information on it from David Pond, our researcher, in terms of what the ministry is doing with it, but I am sure we can get an update from the minister.

Mr Tatham: There is one item to go. We have clarified the fact that there is disagreement on facts. If you get that established, then you can start from there, but if I do not trust the facts and you do not trust the facts, hey, tough.

The Chair: Okay. I will write to the minister and invite him to appear and define the issue within the confines of what the response is to Dr Gandz's report and indicate that we were specifically dealing with the College Relations Commission and have found that part of our recommendations somewhat depend upon the structure around that commission and the rest of the process. We will do that when the House returns, and of course somewhat at the convenience of the minister as well.

There is one other matter, and it does not really matter whether this is on record or not. I think we will leave this on the record so that other members of the committee who are not here may have the opportunity to read Hansard.

I have a letter that was drafted to me by Martin Campbell, who is a lawyer with Beard, Winter, but was a lawyer who was occupied very, very substantially with the Macaulay commission. If you remember, the Macaulay commission was the

report that was commissioned by the government to deal with agencies, boards and commissions.

I met Mr Campbell when I was sitting on the standing committee on administration of justice earlier this month, or late last month, dealing with alternative dispute resolution mechanisms. I was intrigued by his approach to that committee and the breadth of knowledge that he had in relation to some of the commissions of our Legislature.

You will read from his letter—I do not know, can we put the whole letter into Hansard just by agreement?

Clerk of the Committee: It can become an exhibit if you like.

The Chair: Why do I not move that we just table this and that it become part of Hansard itself so that members who are not present today will have the benefit of knowing what we are talking about right within the record?

What I had talked to Mr Campbell about was a little different approach that the committee might want to take in the future in determining what agencies, boards and commissions it might look into. What Mr Campbell is suggesting, through his experience with the Macaulay commission, is that we group a number of commissions into one pot and deal with one aspect of those agencies: for instance, how they resolve disputes and what are the differences in the process.

Another issue he talks about, and it was talked about at the standing committee on administration of justice, was the whole notion of how the public is represented in front of different boards and commissions that are deciding issues; for instance, under the Environmental Assessment Board, who represents the public interest in those hearings and how it is determined who has the right to represent that interest and how far does the process have to go to get to that public interest.

I know you have not seen this letter before, but I would just ask if any of you have any preliminary comments at this time. I would like to discuss this in more further detail when we reconvene after the House meets on 19 March. Does anybody have any comments?

Mr Breagh: Yes. I have just had a quick look through it and I think it is worth while to put this on the committee's agenda. A couple of thoughts: I would like to see this committee now get more of a focus on precisely what it wants to look at. I think when the committee began there was nothing in the way of a public review of any of these agencies at all. There are now several occasions when a committee of the Legislature, for example, can have the authority to review an agency. Changes in the standing orders broaden that even further and it is now a regular occurrence that, for example, the standing committee on public accounts is looking at an agency that this committee is also reviewing. I do not think we need to exclude anybody, but I think it might be useful if we were as a group to establish our own priorities, what would be the first priority of an agency to be reviewed by the committee. I think we need to do some sorting in that sense.

Second, I would like to see the reviews done in more detail. Traditionally we have looked at very quickly, usually in a day or so, a formal hearing on an agency. Since I have been sitting in this week it occurred to me that, although that is useful if there is no other investigation of an agency outside of internal government reviews of them, it is useful to have somebody just kind of take a quick look just to see what are they doing and are they active and what is their relationship to the ministries and all of that. But I am not sure that we do much of a service any more when we only hear from civil servants who are ad-

ministering an agency, without hearing from the client groups that the agency is supposed to serve.

We would be hard pressed off yesterday's hearing to give you a balanced view as to whether advisory committees on different trades are even functional, because we did not hear from anybody who sat on any of those advisory committees at all. We did not hear from either business or labour that might be involved and directly impacted by them. So I think we need to change the nature of the review process that we have. Part of that, I think, is to focus a little more clearly on what kind of agency do we want before us.

My bias would be—I have less of an interest, let me put it that way, in a group that is set up to simply advise the minister on something. Governments, it seems to me, need some latitude on how they seek advice. It makes very little difference to me; as a matter of fact, I would probably cut the other way. I would probably like to see governments get bad advice from time to time and get themselves into hot water. So that is less of an interest to me than it would be to look at an agency that really was involved in serious broad-based regulation or something that had a larger mandate, the Environmental Assessment Board or something like that.

So I think it would be useful to consider this letter briefly now and, perhaps, when we come back in the spring session, spend a few meetings going through what the priorities are of the different members on the committee and how the process in terms of reviewing the different agencies might be changed somewhat so that we perhaps are a little more thorough and a little more intensive in terms of reviewing a particular agency.

1150

The Chair: When I set up the schedule for these hearings—two and a half weeks is essentially what this committee had during the recess—I purposefully did not put in a commission every day in order to allow the committee to have the latitude of looking into something with more depth. In terms of the College Relations Commission, for instance, in addition to the commission we have called Dr Gandz today, and that is extended to calling or asking for the minister to deal with that issue. I think that is a better process than trying to write a report which nobody reads, is put on a shelf somewhere and is gone for ever.

I like the notion, on the larger agencies, of not trying to dissect them because they are so complicated in total. For instance, the Workers' Compensation Appeals Tribunal is a multi-million-dollar operation and requires, I would imagine, a very, very expansive amount of time to really look at it. To even think you could scratch the surface in a week is probably not right. But if we could look at a number of similar agencies and try to rationalize what one is doing with the others and whether or not we can improve part of the process at least may be more fruitful in the end.

Mr Breagh: I agree.

Mr Tatham: Do we ever compare what we are doing here with other jurisdictions, what committees are doing for our government compared to, say, Britain, Australia or the United States? Do we have a comparison like that?

The Chair: One of the very key parts of the Macaulay report, as you know, relates to the setting up of an administrative council as a resource base for agencies, boards and commissions. It is amazing. As I understand it, the province of Ontario has, according to Macaulay, something like 580 different agencies, boards and commissions, whereas our federal

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Ontario has, according to Macaulay, something like 580 different agencies, boards and commissions, whereas our federal government has something like 120 or 150 or whatever. I think that is part of the nature of the animal that a province has under jurisdictions given to us under the Constitution of our country. Therefore, in a lot of ways we have more of an interest in trying to deal with the overall idea of how these people should be trained and what procedures should be utilized in one agency versus another agency.

The idea attracts me to some degree, and maybe what we should do is have either the clerk or Mr Pond do some preliminary research in that area. I know in the United States they have

a structure as such, and perhaps he could find out in an initial way, both at the federal level in the United States and at the state level, what in fact their structure is and whether or not there would be some useful exchange of information between us and them.

Any other business? We will find out from the House leaders what time we are given to meet after 19 March. We will probably not be meeting for the first week anyway, but after that we will be in contact with the subcommittee, I am sure, during those first three weeks.

The committee adjourned at 1156.

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

Chair: Sterling, Norman W. (Carleton PC)

Vice-Chair: McLean, Allan K. (Simcoe East PC)

Breaugh, Michael J. (Oshawa NDP)

Farnan, Michael (Cambridge NDP)

Fulton, Ed (Scarborough East L)

Kozyra, Taras B. (Port Arthur L)

Lupusella, Tony (Dovercourt L)

Nixon, J. Bradford (York Mills L)

Owen, Bruce (Simcoe Centre L)

Pope, Alan W. (Cochrane South PC)

South, Larry (Frontenac-Addington L)

Substitutions:

Breaugh, Michael J. (Oshawa NDP) for Mr Farnan

Daigeler, Hans (Nepean L) for Mr Owen

Johnson, Jack (Wellington PC) for Mr Pope

Morin-Strom, Karl E. (Sault Ste Marie NDP) for Mr Breaugh

Polsinelli, Claudio (Yorkview L) for Mr Lupusella

Tatham, Charlie (Oxford L) for Mr J. B. Nixon

Clerk: Brown, Harold

Staff:

Pond, David, Research Officer, Legislative Research Service



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